United States Court of Appeals for the Second Circuit



SUPPLEMENTAL BRIEF

747-2632073





SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, NEW YORK 10007

TELEPHONE CORTLANDI 7-4580

United States of America

vs.

74 Cr. 159

Philip Stoller and Martin Frank

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New York, New York. September 25, 1974 -9:30 A.M.

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(Trial resumed.)

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(In open court; jury not present.)

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early this morning and also somewhat in advance of the jury so that we can resolve the pending issues having to do with

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the Government-proposed offer of certain transcripts of

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overhears of defendants Frank and Stoller.

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I have considered the briefs which were submitted

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most recently, of course the one last evening which came in from Mr.Feldshuh. The Government lawyers called in some

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from Mr.Feldshuh. The Government lawyers called in some additional cases. I don't really regard them as additional.

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I don't really regard them as additional.

I think they already were cited in the briefs. Nevertheless,

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I am aware of what those cases are.

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I am going to treat the problem in two parts

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because, in my judgment, it requires that.

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In other words, the problem is inherent in the submission of the tapes of the overhears of Mr.Stoller and

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those of Mr. Frank raise quite different considerations and problems and are substantially different, if I may say so, in my own view. I start out with the proposition that Mr. Doonan's testimony I find perfectly credible, and I have no difference with that at all.

As a result of Mr. Doonan's testimony I conclude without any difficulty that problem is of audibility, the legal issues which are usually raised in respect to this matter, are thoroughly resolved in favor of the Government on the basis of what I consider to be by far and away the most succinct recent decision in this area, namely, United States versus Bonano, written by Judge Friendly, I think a year ago about now.

There can be no question that the kind of usual legal issues which are raised in this area are without merit and that the Government is clearly correct on that.

I also find beyond a peradventure that Jerome Allen knew full well what was going on. He knew what the agents were up to and he agreed to participate.

I will not mention his motives, whatever they
may have been. Maybe he was a double agent. Maybe he was
truly cooperating, I wouldn't know. But in terms of coercion,
that is nonsense, and I make the point because once again
I notice, Mr.Feldshuh, you contend that we should bring

Allen in here and listen to him and I don't know, of course,
what Allen will say. I doubt that you do. I don't
think Allen would know what he would say even if you ask him
right at this moment. If he did say that he was coerced
or in fear, it wouldn't surprise me because he is now
contending that the Government has put him in fear of his
life.

I know that from other proceedings involving him which you do not know about, as I pointed out before.

In sum, I wouldn't believe Allen on this issue
in any event or more realistically and specifically, I wouldn't
accept his hindsight testimony as competent, let alone
persuasive.

However, you may be pleased to know that for other reasons which I think are much more favorable to your client's position, I conclude that the Massiah issue so-called is the serious issue in both of these situations. However, my reasoning leads me to conclude that the Government is right? If they really wish to put in the tapes of Mr. Stoller, I am going to permit it.

I emphasize if you really do, Mr. Sorkin, because

I have read those tapes and if you think these are terribly

compelling evidence, fine.

The reason is as fol-ows: Doonan did not seek nor

 did anyone else seek in the first instance on behalf of the United States to go up to the Allen apartment on the evening of March 6.

It was Allen. Allen who has consistently, as we know from other evidence in the case and some evidence which is not in the case, is a man who constantly tells people about how fearful he is. He is the one that requested Doonan in effect to go up there and he is the one who suggested, as I understand Donnan's testimony, that if Stoller should call again he would like the calls electronically recorded.

Therefore, this is not an instance where the Government after an indictment has sought to obtain evidence at the trial of that indictment by some means of an electric overhear which the defendant would not know about. It is quite a different thing.

Doonan, I think, was acting solely at the request of a cooperating defendant and it was reasonable, neither he nor any of the lawyers for the Government were trying to set up Stoller in any way whatsoever. They were concerned, properly in my view, with the possible obstruction of justice or a threat to the life of a cooperating witness.

Therefore, there is no Massiah problem whatsoever despite some of the sweeping language of Massiah.

That language has never been persuasive even when it was first written because though I think Massiah surely reached the right result, as many commentators have pointed out over the pears the reasoning was something else again, and subsequent case law has pretty much established that so long as Government agents are behaving as Doonan did here it is proper. Therefore, the proffered transcripts and tapes having to do with the overhears of the two phone calls on the evening of March 6, 1974, between Jerome Allen and Philip Stoller will be admitted.

Martin Frank's overhears. Here, of course, the testimony again is clear, and as I said I accepted it from Mr. Doonan without reservation. Briefly what happened as we all know is that early in February of this year the basic stock manipulation and false statements by Stoller indictment was filed, 74 Cr. 159. Shortly thereafter Martin Frank came in, in a room upstairs, and entered his plea. Later in the month at a time when I infer that Martin Frank neither knew nor had no reason to know that Jerome Allen was cooperating, he was attempting, acting as his own lawyer as far as I can tell protty much, to get Allen to sign an affidavit the least about which I say, the better, but suffice it unto the moment to say that by its terms it purports to exonerate

Martin Frank from any kind of crime on the face of this globe and certainly in respect to the Training With the Pros situation.

Allen dutifully and understandably reported it to his supervisors in the United States Attorney's office and then there ensued a meeting in the office of the Criminal Division at which point Mr. Edwards, the chief of the Criminal Division, and perhaps assisted by Mr. Sorkin, suggested that they would like to have Mr. Allen have conversations with Frank which were electronically overheard and recorded.

Allen consulted with his then lawyer, Eric Bregman, and finally I agreed to this. During that conversation

Mr.Edwards suggested, and I am sure knowing him as I do

and knowing the situation as I do from Mr. Doonan, that Mr.

Edwards had nothing more or less than Massiah on his mind,

as he probably indeed should have. Therefore, he instructed

Allen not to discuss any subjects other than the proffered

affidavit which would exonerate Martin Frank from all

crimes high and low particularly in respect to Training With

the Pros.

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It's true that Martin Frank is a lawyer. It's true that though perhaps by that time there had been some indication to me that maybe his old friend and partner Sidney Feldshuh would be representing him, it nevertheless seems to me that he was acting as his own lawyer and perhaps you can say for that reason it's not quite like Massiah and that he should have known better and so forth.

I understand that argument and it has certain practical plausibility. On the other hand, what bothers me about the situation is that from time immemorial cooperating defendants have sometimes been offered an affidavit by one of their co-defendants tending to exonerate that co-defendant.

system exists. I do not see how any reasonable person can conclude that this fact means that there was a possibility of obstruction of justice. Very simply, if the Government was worried about that, there was one thing so obvious and easy they could have done, and that was to tell Jerome Allen either not to communicate any further with Martin Frank and brush aside any attempted communications by Frank to Allen, or alternatively, to call or write Allen or have his lawyer call or write Frank, I should say, and say politely but firmly, "We want no more to do with you,

Mr. Allen."

Because of that I do not see that the spirit and

Martin Frank, you are not going to get an affidavit from

Because of that I do not see that the spirit and letter of Massiah comfortably fits with the idea of loading Allen with a recorder to have him go over to talk to Martin Frank after first recording a telephone conversation to set up that appointment. I have read the proffered affidavit and I have compared it with the transcript of what Allen and Frank talked about, most particularly the transcript of the office conversation.

One can say, of course, that allusions were made to the affidavit, perhaps most particularly and pointedly by Mr. Frank. One can also say that this is true as they extend to Allen.

On the other hand, I believe the conversation wandered around the lot and really is its most powerful in having to do with the merits of the stock manipulation here on trial.

Therefore, I do not see how a jury and indeed

I am not even sure a judge, because I inferred from that

tape just the things the Covernment argues, consciousness

of quilt and deep sense of wishing to nip off one source

of powerful evidence against the Defendant Frank.

Since I feel that way I don't see how a jury which

is not a professional group of factfinders could view it in any other manner. I can't really think that the Government can plausibly persuade this Court that they were concerned about obstruction of justice here.

Asking a man to sign an exculpatory affidavit just doesn't strike me as being very forceful indication of obstruction. Surely I realize it can happen if Allen were constrained to sign the thing but obviously he wasn't.

As a matter of fact, if one reads the transcript
Frank, for whatever reasons, seemed to go out of his way
to "change it any way you want to, Jerry."

So, the sum and substance of it all is that I think, powerful though the evidence may be, and I understand why the Covernment wants to get it in and draw just the inferences the Government would like to have the jury draw from reading that, I am frank to say, but that doesn't make it admissible.

Whatever one may think of the statements made

by Frank he is entitled to the protection of the Constitution

just like anybody else is. Hence, I have quite a different

ruling with respect to the proffered evidence so far as

Frank is concerned and I sustain the objection to Frank

and his counsel to the introduction of this evidence at

this trial.

 I might add one more thing: It is true as the Government argues that the defense consented to trying the later file obstruction of justice indictment with the basic indictment in this case. But I do not regard that as the Government does as a waiver of the opportunity to make this kind of contention, that is the so-called Massiah contention in this case.

I just can't believe that one should read the concept of waiver that broadly.

Also, I might say to the Government from their own selfish viewpoint, it would be extremely troublesome to the Government, I would think, if they ever find themselves in the posture where the jury or the judge felt that the proof in the obstruction of justice counts wasn't sufficiently strong and then notwithstanding any curative instructions from the judge to the jury, I would think the Government would be in a very difficult posture if there was a conviction of one or both of the defendants on the manipulation and fraud counts.

This is a subject whereas you know, Mr. Sorkin, where you and Mr. Feldshuh and Mr. Gould and I discussed off the record yesterday. Obviously I shouldn't use that as the basis for this ruling but I point it out as a backdrop to the practicality of what I conceive to be the

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practicality of the problems that might come up even later. Sufficient unto the day, however.

Now, Mr. Feldshuh, if I can get you out of the jury box in your triumphant mood I assume you will be willing to sit down so we can bring in the jury.

MR. FELDSHUH: Thank you very much, your Honor.

THE COURT: I beg your pardon, Mr. Feldshuh,
I now learn that a couple of our jurors are missing.

while we are waiting we will terminate at 4:00 o'clock today, as you recall. I am going to ask the jury to come in on Monday morning at 9:30. As a matter of administration, Mr. Sorkin, would it be your preference as soon as Joseph Bonavia is finished to them go to the transcripts of the Stoller overhears?

MR. SORKIN: What we would rather do is wait until Monday on that. We have other witnesses available and I think we haven't really made a decision on the whole tapes issue yet as to what we want to do.

THE COURT: Very good.

MR. GOULD: Off the record, your Honor.

THE COURT: Yes.

(Discussion off the record.)

THE COURT: We will take a short recess.)

(Recess.)

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(In open court, jury present.)

JOSEPH BONAVIA, resumed the stand,

having been previously sworn, testified as follows:
CROSS EXAMINATION

BY MR. GOULD:

THE COURT: Well, Mrs. DeBartola and ladies and gentlemen, our try didn't work. We will do better next time.

Good morning, Mr. Bonavia.

Mr. Gould.

MR. GOULD: Mr. Sorkin, may I have the original of that subpoena if you have it?

MR. SORKIN: That is a copy of the carbon we keep for our files. Here it is.

MR. GOULD: You keep that and I'll keep this.

Would you mark this for identification.

(Defendant Stoller Exhibit S marked for identification.)

O Mr. Bonavia, can we agree that this document, Stoller Exhibit S, is a copy of a subpoena which you received on or about October 1, 1973?

A Yes.

And it was this subpoena, as I understand your testimony, Mr. Bonavia, which led you to communicate with

Yes, sir.

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When you got this subpoena you gathered your materials and brought them to New York, correct?

That is correct.

And you did see that the subpeona related to Training With The Pros?

Yes, sir. Α

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And you knew, too, that all of the stock of Training With The Pros that you had ever had was in Swiss bank accounts, correct?

No, I had possession of the stock at that time A through the Swiss courts.

But am I not right, sir, that every share of Training With The Pros that you ever acquired was acquired in one or another of your Swiss bank accounts?

Yes. A

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Q I see.

At any rate, if you thought they wanted stock certificates, you got it from some place other than the subpoena, right?

A Well, I am not a lawyer, sir.

Q I know. Did you get it from the subpoena or from some other place?

A No, I understood from the subpoena they wanted
my stock certificates and I had to explain that my stock certificates are in the Swiss courts and I cannot get them.

Q You did see from the subpoena, sir, that they wanted all files, memoranda, correspondence and confirmations relating to certain underwritings and after market or secondary offering of Training With the Pros, didn't you see that?

- A Yes, sir, and I brought it.
- Q And you brought it all?
- A Yes, I did.
- Q You understood that is what they wanted?
- A Yes, sir.
- Q You knew that they wanted that, including the Swiss material, right?

A They wanted any information I had on Swiss bank accounts.

MR. GOULD: Mr. Alenstein points out one question. If I may confer with Mr. Sorkin.

objection to this. We have no objection at all.

(Pause.)

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MR. GOULD: If your Honor please, in the document

gab-4 Bonavia-cross 1 which has been proffered there is a reference to another 2 secuirty, and Mr. Sorkin and I rather than mutilate the document have agreed that we will treat it as if it weren't there and we will ask your Honor to instruct the jury to 5 disregard the reference to the other security. 6 THE COURT: All right. I am sure the jury will 7 understand that. We are only concerned with Training 8 9 With the Pros. MR. GOULD: Thank you very much. 10 (Defendant Stoller Exhibit S for identification 11 was received in evidence.) 12 (Mr.Gould read from Defendant Stoller Exhibit 13 S in evidence to the jury.) 14 Did you bring in, Mr. Bonavia --15 Excuse me, your Honor. If Mr. MR. SORKIN: 16 Gould is going to read the subpoena, I ask he read the entire 17 subpoena leaving out the reference to that other stock rather 18 than paraphrasing what is in there. 19 You want me to? MR. GOULD: 20 MR. SORKIN: Please. 21 MR. GOULD: Sure. 22 (Mr.Gould read from Defendant Stoller Exhibit S 23 in evidence to the jury.) 24 Did you bring the income tax returns for those 25

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years?

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A Yes, I had to interrupt my amended return, but I brought them, yes, when I came.

Q Did you bring with you copies of the materials relating to your Swiss accounts?

A Yes, sir.

Q All your Swiss accounts?

A Yes, sir.

Q Do you remember which accounts you brought, which Swiss accounts you brought, that is?

A Bank Hofmann, Nord Finance and Bank Weiderman.

Bonavia-cross

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deliver anything to him?

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Q And you tell us now that it was on October 23 that you delivered the material?

I brought my briefcase.

Is it not the fact that on that day you did not

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A Whenever the subpoena was.

Q On the return date of the subpoena you delivered the material?

A Yes. I would say that I didn't have all of my records at that time. I had to have Dr. Stucki mail me some records from Switzerland which I brought in later.

Q When you walked in there, as you say, October 23, with all your materials, did you know Mr.D'Onofrio was cooperating with the Government?

A No, sir, I didn't know for sure. Mr. Allen had told me he was and later he called me and said he was not, and he said, "Those guys down there don't know anything."

So I don't know. I don't know what Mr.D'Onofrio's status is in this case right now.

Q Mr. Bonavia, is it not the fact that before you responded to the subpoena, Stoller Exhibit S, you had been informed by Mr. Allen that D'Onofrio was cooperating with the Government?

A Yes, and I later was informed by Mr. Allen that he was not cooperating with the Government.

Q But on the day that you say you went there,
October 23, as far as you knew D'Onofrio was cooperating with
the Government, isn't that right?

No, sir, I believe Jerome Allen made a call to me

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January '74 and told me that and later made a call to me and told me he was not coperating, that D'Onofrio was not cooperating with the Government.

Q When was that?

A It would have been -- I don't know, June of '74, the last time he called me.

Q When I asked you this question yesterday, Page 1610 of the transcript on your cross-examination:

"Q When you did come in to the United States Attorney's office in February 1974, did you know that Mr. D'Onofrio was cooperating with the Government, yes or no?

"A No, sir, I didn't."

Did you give that answer to that question?

A Sir, I came in to the United States Attorney's office.

Q Did you give that --

A YOu are wrong on the year. I didn't come in 1974, October. I came October 1973.

Q I am going to read you the question again.

A Well, I don't know if I would have come in in October of '74.

MR. GOULD: I would get along much better if this witness is instructed to listen to the question and just respond to it. He is volunteering things.

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MR. SORKIN: That was yesterday.

Yes.

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qb-6. Bonavia-cross 1 MR. GOULD: I just said yesterday. 2 MR. SORKIN: I am sorry. 3 MR. GOULD: I am referring to something that 4 appears at Page 1560 of the transcript, Mr. Sorkin. 5 Excuse me, I got it wrong. 6 Yesterday you testified that there was a meeting 7 Q at Allen's apartment in 1971. Do you remember that? 8 9 A Yes, sir. (Pause.) 10 End 3A 11 12 13 14 15 16 17 18 19 20 21 23 24 25

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1	jgrf 3b am 1 Bonavia-cross
2	Q That is the testimony which appears at page
3	1560. In that meeting do you remember who was present?
4	A Mr. Allen, Mr. Stoller, Mr. Feeney, myself, and
5	another gentleman who I didn't know.
6	O Do you remember what Stoller said at that
7	conference or meeting about D'Onofrio?
8	That is all I am interested in.
9	A He said he would take his gun, shoot him and put
10	the gun in his mouth and kill himself.
11	O Didn't Stoller tell you in that meeting that
12	D'Onofrio was cooperating with the Government?
13	A No, sir, he discussed another case. It wasn't
14	Training With The Pros.
15	O You are sure about that?
16	A Yes, sir.
17	O You are sure they weren't talking about Training
18	With The Pros?
19	A No, sir, he was talking of another case, if I am
20	permitted to tell it I will tell what it was.
21	MR. SORKIN: That is up to Mr. Gould.
22	MR. GOULD: I didn't hear the last thing he said.
23	MR. SORKIN: He said if he wants you to hear it
24	he would be happy to tell you and I said it is up to you.
25	MR. GOULD: No, I will ask my questions, thank

you.

1	jqrf 2 Bonavia-cross
2	O I am alittle confused. You are absolutely
3	certain that you were not talking about Training With The
4	Pros?
5	A I don't recall Training With The Pros was
6	mentioned.
7	Q As far as your recollection it was never mentioned?
8	A I probably asked what they were going to do about
9	reimbursing my funds but I didn't hear of any D'Onofrio
10	thing of Training With The Pros.
11	Q You didn't hear that?
12	A No. As I recall it was another matter.
13	Ω Now, yesterday, September 24th, were you asked
14	this question by Mr. Sorkin about that meeting at which
15	Mr. Stoller said he was going to kill D'Onofrio and then
16	kill himself:
17	"O Tell us, please, what was said and confine your-
13	self to Training With The Pros.
19	"A They discussed Mr. D'Onofrio, that Mr. D'Onofrio
20	had talked to the United States Attorney about Training
21	With The Pros and created a lot of problems. Mr. Stoller
22	said he would kill D'Onofrio and then commit suicide."
23	Did you give that answer yesterday?
24	A I don't know if I said Training With The Pros.
25	I know the discussion was on another thing.

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1	jarf 3	Bonavia-cross	
2	0	Didn't you give that answer yesterday?	
3	Λ	If I gave that answer it was in error.	
4	Ú	Λ mistake?	
5	λ	An unintentional error.	
6	Ó	Unintentional?	
7	А	The discussion was another case that Mr	. D'Onofrio
8	testified	against a person.	
9	0	Have you read the transcript of your te	stimony
10	yesterday?	Have you looked it over?	
11	A	No, sir.	
12	0	You do concede to me that that is what	you said?
13	A	I might have said it in error, I don't	know.
14	n	Are you telling me the reporter made a	mistake?
15	A	I might have said it. I don't want to	read it.
16	If it is t	here, I said it.	
17	0	And if you said it it wasn't true?	
18	A	If it was an honest mistake, if I said	it.
19	0	If you said that yesterday it was an ho	nest
20	mistake?		
21	Λ	I was there only concerned with Trainir	ng With The
22	Pros. I w	vas not concerned about the other case of	liscussed.
23	· Ω	Mr. Bonavia, just please, in response t	o his
24	Honor's ad	monition, listen to my questions and ar	swer them
25	and don't	volunteer, please, or we will never get	finished.

1	jqrf 4 Bonavia-cross
2	A I am not going to say I lied if I made an honest
3	mistak e.
4	Q It was not a lie, it was an honest mistake?
5	A Right.
6	Q Can you think of any other honest mistakes you
7	made yesterday?
8	A Yes, sir, between 1967 and 1969 I can think of
9	a lot of them.
10	O Tell us now what other honest mistakes you made
11	yesterday.
12	A Will you let me tell you what honest mistakes
13	were made in that time?
14	O No, sir, I am asking you what other honest mistakes
15	you made in the testimony you gave yesterday. That is
16	September 21th.
17	A You said at any other time. I said between 1967
18	and 1969 I made mistakes.
19	O The mistakes you made between 1967 and 1969, as
20	I understand it, were that you were engaged in criminal
21	acts, isn't that right?
22	A No, sir. Could I answer this?
23	O Just ves or no.
24	A No, I was not.
25	O You were not?

1	jørf 5	Bonavia-cross
2	A	No.
3	Ω	In 1967 you testified yesterday that you committed
4	perjury	before the Securities and Exchange Commission, wasn't
5	that a m	istak e?
6	Λ	Under threat of my life or if I took the Fifth
7	Amendmen	t. I was not to talk because I was to go to
8	jail vol	untarily if I take the Fifth.
9	Ω	But it was a mistake, wasn't it?
10	A	It is a choice of two evils.
11	Ó.	In 1969 you again committed perjury before a
12	grand ju	ry, didn't you?
13	А	Could I explain
14	ű	Just tell me, did you or didn't you?
15	A	Thanks to Mr. Stoller, I did.
16	Ú	You did.
17		And that was a mistake, wasn't it?
18	A	As I see it now, yes.
19	Ó	Now I want to know in addition to this
20	honest m	istake as to whether D'Onofrio was talking to the
21	United S	tates Attorney about Training With The Pros which
22	you mad€	yesterday you can remember any other honest mistake
23	in the t	estimony that you gave in your direct examination
24	yesterda	y? Can you think of any?
25	A	I didn't read the testimony yesterday. You asked

jarf 6 Bonavia-cross

me if I read it and I didn't see it.

Sir, as I understand your testimony now, assuming that that was a mistake about the conversation of D'Onofrio's cooperation in 1971, let's hear now when for the first time you learned that D'Onofrio was cooperating with the Government?

Sir, I have never really learned that. I can't say that he is. I have heard it. I have heard he wasn't. I heard that he was.

Again, I have heard that he wasn't. I don't know.

Well, I know you don't know but I want to know when you heard about it for the first time.

I don't remember. I heard he was and wasn't for a long time. I have heard that they were suspicious that he was. I have heard that he was not. I don't know. I don't know if he is now. I don't know what else I can tell you. That is the truth. I don't know.

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O Before you got the subpoena from the Government in October 1973, had you ever been informed by any of the people in this case, Mr. Frank, Mr. Stoller, Mr. Allen, Mr. Herbert -- had you ever been informed that Mr. D'Onofrio had become a full time informer for the United States Government with immunity from prosecution?

- A Yes, I heard --
- O Did you listen to my question?

A I can't say I was informed. I don't consider rumors information.

O If Mr. Allen told you that or Mr. Stoller or Mr. Frank, that would be just a rumor?

A If someone said I heard that Mr. D'Onofrio is testifying for the Government, later somebody said we were wrong, he is not, we talked to him, he is not, then again I hear he is, I don't know.

O I am referring to a document which is marked in this case as 3517-D.

Do you remember appearing on October 20, 1973 before a notary public in Rockford, Illinois, a lady named Margie L. Karlson, a certified shorthand reporter and dictating a statement?

A Yes, sir.

MR. SORKIN: October 20th?

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MR. GOULD: That's when it is notarized, it says here.

MR. SORKIN: I think in the beginning he says he appears on October 29th.

MR. GOULD: Mr. Sorkin, I can only read what it says here.

THE COURT: Gentlemen, is this really this important? Can't we move along? Whatever the document says, it says.

MR. GOULD: What difference does it make? Apparently there is a mistake in the notarization. I don't know.

THE COURT: I think we are doing entirely too much nitpicking. Let's go along.

- Did you give that statement on or about October 20th?
 - I haven't any idea, sir, what that statement is. A
 - You have no idea? 0
 - I don't know what that means.
- Did vou say to this lady and swear to this state-0 ment, page 3, "Mr. Allen then assured me that if necessary he would appear in person to testify for me against Bank Hofmann since he knew it was the proper thing to do.

He then went on to tell me that Mr. Dofrio," that means

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D'Onofrio, doesn't it?

A I am sure it does.

Q -- "who is the promoter of Training With The Pros stocks, this is the stock of my complaint against Bank Hofmann, had turned full time Government informer with full immunity"?

A Yes, at that time, and he later called me and said that he found out that Ray D'Onofrio was a standup guy.

He did not turn informer. So I don't know if he did or if he didn't.

MR. SORKIN: I must object, your Monor.

The initial question was before he got the subpoena October

1st. Even if the date is October 20th or 29th, it is still

after he got the subpoena.

THE COURT: Mr. Sorkin, I don't know what counsel has on his mind. I can't answer that.

MR. GOULD: That is unfair. I didn't ask him whether he made the statement before he got the subpeona.

THE COURT: I didn't say you did. I'm trying to respond to what I consider an unnecessary question.

However, while we have had this interruption, can't we move on here?

MR. GOULD: I'm doing my best, your Honor.

It's the volunteered responses which hold me up.

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THE COURT: Fine, but let's move on to some other subject.

MR. GOULD: I offer in evidence what has been marked as Government's Exhibit 3517-D. I'm only interested, however, unless Mr. Sorkin wants the whole thing in, in the part I read, page 3.

MR. SORKIN: Your Honor, I would ask that the whole document be brought in. We have no objection and we will concede that it is what he said.

THE COURT: He is entitled to offer what he wants to offer. If you feel you want to offer more, you can offer more later. Let's not waste time on that unnecessarily --

MR. SORKIN: I have no objection.

MR. GOULD: Thank you very much.

(Defendant Stoller Exhibit T for identification, received in evidence.)

Q Mr. Bonavia, after you answered the subpoena, how many times did you appear at the offices of the United States Attorney?

A I believe five times.

O Between October 1973 and yesterday you were there five times?

A Yes, sir.

O Anybody come out to Rockford to visit you?

You believed everybody, right?

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Yes, sir.

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Q And then did Mr. Wall call the police and say that you had been threatened with murder?

A No, sir.

gab-1

Q Did he say anything?

A Mr. Wall told me there wasn't much he could do for me now. He says, "I wish you had come to me before."

MR. SORKIN: Your Honor, I object.

MR. GOULD: I think he waived the privilege, your Honor.

MR. SORKIN: I understand. What is the relevance of what he tells Mr. Wall after he goes before the grand jury? There wasn't any testimony on that.

MR. GOULD: If your Honor please, the man testifies that he committed perjury under threat and that he then went to a lawyer and told it to a lawyer.

I don't have to explain in front of the jury what was available to counsel.

THE COURT: I don't see, however, that necessarily it is that clear, that he has waived this. I do agree with Mr. Sorkin. I don't recall anything on direct as to what he told Mr. Wall.

MR. GOULD: I think your Honor is in error, with all respect, Page 1548. He says he went to see Mr. Wall and I told him --

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THE COURT: I have it, Mr. Gould. That is what I have in my hand. Let me get to the page. I don't want to wear you out talking here.

MR. SORKIN: Would your Honor look at just the top of the next page.

THE COURT: That's right. That is what I am talking about. I don't see that he went into what he said to I don't think we should get into it here even Mr.Wall. if he is willing to waive the privilege.

MR. GOULD: All right. Your Honor is excluding it on the grounds he didn't waive the privilege, as I understand it.

THE COURT: We can find out if he wants to. Then I say to you what is the point? He can go on forever here.

MR. GOULD: I am sorry, your Honor.

THE COURT: You want to make --

MR. GOULD: I don't know of any other way to do this other than the way I am doing it.

THE COURT: I suggest to you most simply and practically, if you ask a man what he talked to his lawyer about, and assuming the man is willing to waive the client privilege, I suggest to you that that is an endless --

I don't care what about he told the MR. GOULD: lawyer or whether he waives the privilege. I am going to my 2 ne

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next question. Your Honor ruled. I am perfectly satisfied to proceed on that basis. I don't want him to waive any privilege.

MR. SORKIN: Then I withdraw my objection.

Q I want to know whether your lawyer did anything about the fact that you had committed perjury before the grand jury in 1969.

A I asked him if I could retract my testimony.

He said that he would check into it and I never heard from him again.

- Q Never heard again?
- A No, sir. I paid him \$5000 and that was it.
- O You never saw him again?
- A No.
- Q You mean you went to see Mr. Wall the day after you had committed perjury before the grand jury --
 - A No, sir, the same day.
 - Q The same day?
 - A Yes, sir.
 - Q You paid him a \$5000 retainer, correct?
 - A Yes, sir.
- Q You asked him if he could do anything about it, and you never heard from him again, is that the whole thing?
 - A He said he would let me know.

1	gab-4	Bonavia-cross
2	Q	And he never did let you know. Did he send you
3	back your	money?
4	A	No, sir.
5	Q	How long were you with him?
6		MR. SORKIN: Objection. I don't understand
7	the releva	ance of all of this.
8	A	I didn't look at my watch.
9		THE COURT: Just a moment. Sustained. You
10	will disre	egard that.
11		Sustained.
12	Q	At any rate, as far as you know, no effort was
13	ever made	to correct your testimony until 1974?
14	A	I can't speak for Mr.Wall. I don't know what
15	he did.	He might have put a lot of time in on it.
16	Q	You never heard from him again?
17	A	I don't know what he did. I can't speak for
18	him.	
19	Q	In 1970 were you still afraid that somebody was
20	going to	murder you?
21	A	I was starting to grow up a little. I was
22	always ca	alled an Illinois hick. The Illinois hick was
23	not going	to be bullied around by Stoller. I was going
24	to tell t	the truth and tell it like it is. The little hick
25	is not as	fraid any longer.

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	1	gab-6	Bonavia-cross
	2	A	I don't know. I didn't mark the calendar.
	3	Q	Whendid the little Illinois hick develop into
#	4	the lion?	
	5	A	That is Stoller's
	6		MR. SORKIN: I object to that. That is unnecessar
4	7	on Mr. Goul	d's part.
	8		MR. GOULD: That is his words.
	9		MR. SORKIN: He said h was still scared yesterday
	10	when he tes	tified.
	11		THE COURT: Please, Mr. Sorkin. You object.
	12	I think the	e jury can decide all of this without me sustaining
	13	any objecti	ons to that.
4	14	Q	You live in Rockford, Illinois, don't you?
	15	A	Rockford, Illinois.
	16	Q	What is the population of Rockford, Illinois?
	17	A	About 137,000.
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Q Now, sir, you said that from 1968 until some time in 1973 you had no access to any of the documents in your Swiss account?

- A Absolutely none.
- Q You didn't know what was going on in the account?
- A No. I signed documents for the bank and they would mail them to me three or four times and Mr. Herbert never did do it. Mr. Stoller first promised me he would get them and then told me, "You can't even prove you have an account and you can't prove you have Training With the Pros, and you better shut your mouth and that is why you are not getting your account."
 - O That is what he told you?
 - A Yes, sir.

MR. GOULD: Would you mark this for identification, please.

(Stoller Exhibit U was marked for identification.)

- Q Mr. Bonavia, I show you Stoller Exhibit U for identifion. Is that your signature on there?
 - A It looks like -y signature.
 - Q There is no reason to doubt it, is there?
 - A No, sir, and I testified yesterday --

1	qb-2 Bonavia-cross
2	Q Just answer my question. I can't cross-examine
3	this man who keeps volunteering
4	A It is my signature.
5	MR. GOULD: and then get criticized for taking
6	too much time.
7	THE WITNESS: It is my signature, but I testified
8	to this document yesterday.
9	THE COURT: Wait a minute, Mr. Bonavia. You should
10	heed what we said earlier this morning. The system
11	really works better if you just answer the question.
12	THE WITNESS: Yes, that is my signature.
13	Q Have you got any doubt about it?
14	A No.
15	Q It is your signature, right?
16	A Yes, I signed it.
17	Q Do you know what this paper is I am showing you?
18	A No, I don't.
19	Q Didn't you just identify this document yesterday?
20	A I know what I signed on May 20. I made that
21	statement.
22	Q How do you know this is the May 20 document?
23	A How do I know what?

Q

20 document?

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How do you know what I have shown you is a May

A It says May 20 on it.

Q I didn't show you the whole document.

A You showed me May 20, 1969. It is right above my signature.

Bonavia-cross

THE COURT: Please, Mr. Bonavia. Let's get back on the track, gentlemen.

MR. GOULD: I am doing my best, your Honor.

THE COURT: Well, I will assist you. However,
I would suggest to you that rather than take up these volunteering remarks I would be more helpful on your behalf if
youwould let me insist that the witness respond.

MR. GOULD: I will make every effort to do that.

THE COURT: Good. Now we will go forward.

Q Now, sir, did there come a time when you wanted to take some money out of your secret account in Switzerland, to wit, account #4318?

A There came a time when I wanted to take money out of my full disclosure account as a check mailed to me that I deposited in my bank.

Q Didn't you get certain securities delivered to you in Rockford in 1971 out of the secret account 4318, just yes or no?

A I don't know if it was 1971 or'72. I did have securities delivered to me in Rockford from my full disclosure

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1	7b-4 Bonavia-cross
2	account. That was my instruction.
3	Q Mr. Bonavia, 4318 is the secret account, is it not?
4	A Yes.
5	Q Not the full disclosure account.
6	A Do you have the bank document?
7	MR. GOULD: I must appeal to you again, your Honor.
8	THE WITNESS: Yes, it is my secret account.
9	THE COURT: You can appeal to me again. However,
10	I think the witness may be confused or if he is not I am
11	confused. What is it you really want to know? Because the
12	question now seems to me to be rather obscure and I want to
13	support the witness if he is having the same trouble I am.
14	Do you understand what he is asking you, Mr.
15	Bonavia?
16	MR. GOULD: I have asked him
17	THE COURT: Please.
18	THE WITNESS: I believe he asked me if I asked.
19	for the securities from my secret account. I asked for the
20	securities from my full disclosure account.
21	MR. GOULD: I never asked a question remotely
22	resembling that one.
23	THE COURT: That may be. Now that we know he is
24	as confused as I am, I ask you to put the question again. Am
25	may I suggest that it would help us all, including you,

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Bonavia-cross

Mr. Gould, if you would stay at this very corner. I think there may be a slight hearing problem here.

Are you having a little difficulty catching his questions when he turns his back?

THE WITNESS: At times, yes.

THE COURT: Come up here, if you don't mind, sir, and let's see if that doesn't help us. Because I hear very well, but I haven't been able to hear some of your last questions, I tell you.

MR. GOULD: Very well, your Honor. I am probably aging, you see.

THE COURT: We all are.

O Mr. Bonavia, what was the number of your secret account?

A 4318.

Q Did there not come a time when you withdraw securities from the secret account?

A No, sir, I ordered them withdrawn from my full disclosure account. How the bank marked them in their records, I don't know.

MR. GOULD: Would you mark this for identification, please.

(Stoller Exhibit V was marked for identification.)

A Mr. Gould --

Q I haven't asked a question, Mr. Bonavia. When
I do you can respond to it. I will come back here so you
can hear me and if you don't hear me, tell me and just answer
my questions. That is all I want to have from you.

A Yes, sir.

Q You have testified that you had no communications whatever about your secret account, yes or no?

A That's right.

Q And I now ask you, did there not come a time when you requested the Bank Hofmann to deliver certain securities out of your secret account, 4318, to the American National Bank in Rockford, Illinois, yes or no is all I want.

A It was Chief Consolidated Mining that was purchased and my full disclosure --

MR. GOULD: I ask your honor to direct the witness to answer my questions.

MR. SCRKIN: I thought he had.

THE COURT: Mr. Sorkin, please. I really think your comments are not very helpful. I don't blame you but, please, editorializing here is really superfluous this morning.

Let's go back. We will all disregard this,
Mr. Gould. We will have the question read back and Mr.

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1	qb-7 Bonavia-cross
2	Bonavia, listen very carefully.
3	(Question read.)
4	A No.
5	Q I now show you Stoller Exhibit V for identifica-
6	tion and I ask you if you did not receive a copy of that
7	letter on or about August 24, 1971?
8	MR. SORKIN: Did he receive a copy?
9	MR. GOULD: Yes, sir, that he received a copy of
10	it.
11	Again, I just want yes or no.
12	A No, sir.
13	Q You never received a copy of that?
14	A No, sir. I received it in 1972 when I picked up
15	my account.
16	MR. GOULD: I move to strike that out, your Honor
17	I just want him to respond.
18	THE COURT: I know, Mr. Gould You made
19	yourself clear beyond a peradventure. I will strike it out
20	We all understand that one.
21	Q Did there come a time, sir, when you were advised

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Not 4318?

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I wouldn't wire money to a secret account.

End 5A

Q Let me understand what your are telling us here.

You do know that there came a time in August 1971, I am

suggesting that date to you, when certain securities came

to your account at the American National Bank at

Rockford, Illinois, for the account of Joseph Bonavia,

correct?

- A Yes.
- Q And they came from Switzerland?
- A They first went to Switzerland and then back to Rockford, Illinois.

1	5b am jarf 1 Bonavia-cross
2	Q I think that is probably right. They first
3	went to Switzerland and then came back to Rockford. Why
4	did they go to Switzerland?
5	A They were collateral.
6	Q Collateral on a loan over there?
7	A I didn't have a loan over there.
8	Q Why did you send them to Switzerland for collateral
9	A Because when they purchased Training With The
10	Pros they threw my account into debit. They weren't satis-
11	fied with the money account, they wanted to throw it in a
12	debit besides.
13	O Mr. Bonavia, at any rate, they first went to
14	Switzerland and then back to Rockford, Illinois, right?
15	A I bought the 15,000
16	Ω Yes or no is all I want from you.
17	A Yes.
18	Q Now, sir, did the bank in Rockford advise you
19	that the securities had been received, yes or no?
20	A Yes.
21	Q How did they advise you?
22	A I signed a note for 74,567 which I still owe.
23	Q And you gave them certain collateral for that note,
24	didn!t you?
25	A These stocks.

1 jarf 2 Bonavia-cross 2 You gave them collateral which included 22,600 3 shares of Sensory Systems, Inc., right? No, I gave them ore than that. I had stock 5 transferred to my name. 6 Included in the collateral were at least 22,600 O 7 shares of Sensorv Systems which you had in Switzerland? 8 No, that is not true. A 9 0 No? 10 Α No. 11 Q Do you remember what the collateral was? 12 It was 70,000 shares of Chief Consolidated Mining. Α 13 You are telling us now that they didn't send 22,600 14 shares -- by the way Sensory Systems is Training With The 15 Pros, isn't it? 16 A Yes, sir. 17 0 We are talking about Training With The Pros. 18 Yes. 19 You are telling me now they didn't send 22,600 20 shares to your bank in Rockford, Illinois? 21 Sir, I don't remember that they did. I remember 22 that it was 60,000 and 15,000 Chief and as I recall it when 23 I picked up my account in '74 the certificates were in 24 that account. 25 The 22,600 was still in the account? 0

1	jqrf 3 Bonavia-cross
2	A That is the way I remember it.
3	O And you say they never got to Rockford, Illinois?
4	A Not that I remember.
5	O You are confident that you never saw this paper,
6	Stoller Exhibit V?
7	Λ No, sir.
8	Q What is the name of the man who handles your
9	account in the bank at Rockford, Illinois?
10	A I don't know. Really, I don't.
11	Ω You don't know anybody at the bank?
12	A I know a Roy Lilliendahl.
13	O What is his name?
14	A President of the bank but he doesn't handle my
15	account.
16	Q Who?
17	A Lilliendahl.
18	O In 1971 who handled your account in the American
19	National Bank in Rockford, Illinois?
20	A I don't know who received this.
21	O I didn't ask you that. I want to know who
22	handled your account.
23	MR. SORKIN: I must object as to the relevance
24	of all of this. We seem to have left Training With The
25	Pros vesterday.

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MR. GOULD: We have not left Training With The Pros, your Honor. This is the subject of direct testimony in this case.

THE COURT: Look, I didn't say one way or the other. What I do say to both of you is that your editorial comments are totally useless from your own selfish viewpoints.

MR. GOULD: I will try to refrain from them. I want to get an answer.

THE COURT: Before you do that I want to interject something so I know the witness understands.

Mr. Bonavia, he is attempting to find out if at this time, meaning by that 1971 apparently when this transaction took place, that you understand there was any particular individual in the bank there in Rockford who was handling your affairs?

THE WITNESS: No, I don't. There are a lot of people in the bank.

- When you negotiated the loan to which you have testified this morning with whom did you negotiate it in the bank?
 - Mr. Lilliendahl. Α
 - How do you spell it? O
 - It's a Swedish name. It's hard to spell. THE COURT: If you don't know, don't volunteer.

1 jarf 5 Bonavia-cross THE WITNESS: I don't know. 2 Have you got a transcript of the account, your loan account with the American National Bank during 1971? 5 Yes, sir. Where is it? 0 In Rockford, Illinois. Α And it is your testimony here that you did not get 9 into your account in the American National Bank in Rockford, 10 Illinois in 1971, 22,600 shares of Sensory Systems from 11 account No. 4318 in Switzerland, that is your testimony 12 under oath here today, right? 13 I don't see how I could have. When I picked 14 up my account we got to Stucki and I counted the shares. 15 THE COURT: Mr. Bonavia, please, you already 16 answered this in any event and I was just about to 17 sustain an objection to that because it has been asked and 18 answered. The record is clear, Mr. Gould. Repetition 19 is not going to serve your interests or those of your 20 client. 21 MR. GOULD: Only to the extent --THE COURT: I meant it, you know I meant it 23 and let's not argue about it. 24 Now, sir, did you have an account at Dominick 25 & Dominick in New York?

Did you ever at any time give instructions that

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1	jgrf 7 Bonavia-cross
2	any securities should go from your account No. 4318
3	into an account in Dominick & Dominick?
4	A I signed a number of things at the bank with
5	promises of my documents. I don't know if I did or not.
6	o What is your answer, yes, no or you don't know?
7	A I don't know.
8	O Have you ever been in the offices of Dominick
9	& Dominick?
10	A I don't recall that I ever have.
11	THE COURT: Please.
12	Was the Dr. Stucki that represented you and
13	arranged to have the Bank Hofmann documents delivered to
14	you in '72?
15	THE WITNESS: Yes, sir.
16	THE COURT: He was your lawyer for that purpose?
17	THE WITNESS: Yes, sir.
18	THE COURT: How were they transported to this
19	country? Were they mailed over by him, do you remember?
20	THE WITNESS: The original documents were put
21	in the Swiss court. He still has the stock certificates.
22	I had him send the originals for the purpose of this trial
23	and he is holding up the trial in Switzerland until the
24	original documents can be returned to him.
25	THE COURT: That is not really the thrust of
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jarf 8 Bonavia-cross 2 my question. My question is: 3 Did he or someone else have them mailed to you in Rockford? 5 THE WITNESS: No, sir. He made a call to the bank 6 and arranged to have them give them to me. I went over and 7 they refused. I went back to Dr. Stucki. He called and said he would come over with me. THE COURT: You personally picked them up in 10 Zurich? 11 THE WITNESS: Personally at Bank Hofmann and I 12 took them back to Dr. Stucki's office and left them there. 13 THE COURT: How did they get across the Atlantic? 14 That is what I want. 15 THE WITNESS: Sir, the certificates are still 16 in Zurich in the court. 17 THE COURT: You have said that. These documents 18 which have been produced here in our trial, how did they 19 get back here? 20 THE WITNESS: I had Dr. Stucki first send me photo-21 stats so that I could file an amended return. 22 THE COURT: He mailed them? 23 THE WITNESS: Yes. I had him mail me the originals 24 for the purpose of this trial. 25 THE COURT: He mailed those things, the originals

jqrf 9 Bonavia-cross or Zeroxes or whatever in our marvelous societies we can have everything, he mailed those all to you in Rockford? THE WITNESS: Yes, sir. THE COURT: Good. THE WITNESS: Yes, your Honor. THE COURT: Anything else, Mr. Gould? MR. GOULD: Yes, your Honor, I am far from finished.

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totally false, for me to deduct from my income taxes and I did not use it.

THE COURT: Mr. Bonavia, please.

A It is a false document.

THE COURT: That may be. That is not the question.

The lawyer is entitled to ask you questions as he sees fit

unless the Government objects, you see. If there is some
thing you want to bring out, Mr. Sorkin can bring it out

later.

I think if you understand that -- whatever you may regard Mr. Gould's demeanor to be, he has the right to ask proper questions. You see. He has a right to limit them.

You or others may criticize the system, but that is the way it's pretty much been for quite a few centuries now, and perhaps it isn't pleasant, I admit.

Mr. Gould, may I suggest, while we are dealing with this problem, if you want him to identify this, can we do it so that we can again get --

MR. GOULD: I'm going right back. I just want to show him something, your Honor.

THE COURT: Fair enough. You are entitled to do that.

O Did you get this letter on or about December

30, 1970 in the mail?

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A No, sir, it was typed up for me at Bank Hofmann and given to me to use for income tax purposes, which I did not use.

- O It was delivered to you physically --
- A By Mr. Ballmer at his desk.
- o Mr. Stoller wasn't there, was he?
- A No, sir.
- O Just you and Mr. Ballmer?
- A Mr. Marshman was there.
- Q Who is Mr. Marshman?
- A I don't know. He is an officer of the bank.
- O But Stoller wasn't there?
- A No, sir.
- O And Allen wasn't there?
- A No, sir.
- O And Frank wasn't there?
- A No, sir.
- O And this letter was cooked up, was it not, between you and Mr. Herbert?
- A It was offered to me by Mr. Ballmer. It was not cooked up by me. He said "I have something for you that can be a benefit to you and your taxes."

I took it up and I did not use it. It was a false

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THE COURT: Just a minute. Are you referring

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MR. GOULD: Yes, sir, which is extremely --

THE COURT: Gentlemen, I have suggested many a time to both of you that your editorializing on both sides is of no consequence whatsoever, as you well know. Again, we have wasted 60 seconds on this point which I tried to make clear to you for days now.

O Mr. Bonavia --

to Mr. Sorkin's comment?

THE COURT: Just a moment. I think now is a suitable time for the morning recess and we will try to get ourselves sorted out in the interim.

Ladies and gentlemen of the jury, it will be 15 minutes this morning. Counsel please remain.

(Jury leaves courtroom.)

THE COURT: You can step outside, Mr. Bonavia, and stretch your legs.

(Pause.)

THE COURT: Gentlemen, you wish to go up and see Judge Metzner. There are three things I want to observe. I am not going to repeat this again.

First to you, Mr. Sorkin. You can be as outraged or as unhappy or whatever as you want to be, but I insist you have to do this for your own self and keep it to yourself.

If you wish to object, object. I am not oblivious to what is going on here, and I insist that I not be given a lot of educational rhetoric which you really mean for the jury, I suppose.

The jury also, gentlemen, is not stupid either.

They have had enough of all this. It is clear by now that they aren't impressed by any of this.

Side bar comments, sotto voce comments and hand ringing about what another lawyer is doing doesn't impress juries after they get used to us. They are used to us now, no doubt at all.

I say to you, Mr. Gould, I will support you with this witness if you will stop insisting on picking up when he does volunteer. You can't have your cake and eat it, too. If you want a yes or no and when it is called for, I will support you. When he makes a voluntary statement, you then have a tendency to seize upon that.

It has got to be one thing or another. I am not

impressed by this either. I don't like to interrupt the lawer's cross-examination no matter how idiotic I may think it is. That is not my business. What is my business is not to be caught in the middle by these comments of both of you. That seriously is my business.

MR. GOULD: What I have objected to, your Honor, is that the kind of comments Mr. Sorkin has made --

THE COURT: I agree with you.

MR. GOULD: -- are calculated to interfere and obstruct my cross-examination.

THE COURT: I have agreed with you on that, sir.

I have made it plain in front of the jury. I believe it is childish. I think the jury knows it. That doesn't --

MR. GOULD: Four times this morning, your Honor, there have been deliberate obstructions.

THE COURT: Mr. Gould, I have intervened for just this reason. Don't talk to me like I was a school boy. I just interrupted this trial in order to make the point you are making.

Now, repetitions, I told you before, are not helpful to you or your client.

Now, please, I know you are upset. You know me well enough to know that I don't have to be lectured to or talked down to by you or anybody else.

MR. GOULD: I don't intend to.

Don't do it. I have had it made plain here that you object and I don't blame you. I am also objecting to something you do, and that is you insist that I back you up and get an answer directly. I agree with that. But don't seize his little volunteers to take off from there and then say, "What about that?" Then you leave this Court right squarely in the middle.

MR. GOULD: I think your Honor is absolutely right about that. I will try to avoid repetitions of it.

I simply point out, when a lawyer in a case like this is involved in cross-examination which is directed at the credit of the witness --

THE COURT: I said I support you on that.

MR. GOULD: Thank you very much.

THE COURT: I can't do anything else. My own views of your cross may be quite different, but I support you even when I don't think you are doing very well.

I will do the same for Ira Sorkin and the same for Sidney Feldshuh.

I must say, gentlemen, we are not being very professional in the way we have been going this morning.

It doesn't benefit any of you. I know that you don't mean

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I am fond of you all. In your most wretched moments this. I am fond of you.

Let's get down to better moments. You go upstairs and see the Judge.

(Recess.)

(In open court; jury absent.)

MR. GOULD: I am sorry, your Honor. We had a delay before Judge Metzner.

THE COURT: Have you made peace?

MR. GOULD: We have made our peace. We discovered we went to public school together. He discovered. I don't know that that reflects any great credit on either of us. He remembered that we had an algebra teacher who never referred to me as anything but Mr.Baseball, which was a reflection on my mathematical scholarship.

(Jury present.)

MR. GOULD: Would you give me Government Exhibit 43A please.

MR. SORKIN: Yes, sir.

Mr. Bonavia, you have previously identified in this case Government Exhibit 53A, do you recall it?

> Yes, sir. A

Do you remember signing it?

Yes, sir.

Bonavia-cross

Q You will note, will you, sir, that in this paper which is instructions to the Bank Hofmann to open the secret account, 4318, right?

A Yes, sir.

gab-5

Q You will note that it contains the following language, "I hereby request your bank to retain until further notice any letters, documents, statements of account or deposits concerning me."

Do you remember that?

A Yes, sir.

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Bonavia-cross

- Q Now, sir, did you ever, from 1968 on, write a letter to the Bank Hofmann requesting the accounts?
 - A I wrote --
 - Q Just yes or no, please.
 - A Yes.
 - Q When did you write the letter?
 - A From 1968 through 1969 I wrote 10 or 12 letters.
 - Q You wrote what?
 - A Ten to 12 letters.
 - Q Do you have copies of those?
- A No.
 - Q Where are they?
- A Bank Hoffman.
 - Q Where are the copies of the letters?
- A I don't have copies.
 - Q When you picked up your materials from the Bank
 Hofmann in 1972, did you get the letters that you sent them?
 - A I asked and they refused to give them to me.
 - Q They refused, did they not, to give you any documents at first?
 - A Yes.
 - Q But your lawyer did get copies of all the documents?
 - A They said they did not have to give my instructions to the bank.

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Q Then is it the fact, sir, that you did not keep a copy of a single letter that you wrote to them?

A No, sir, I never kept a copy.

Q Do you know what was the actual office that Mr. Herbert had with theBank Hofmann?

A He told me he was executive vice-president in charge of foreign accounts.

Q When you sent these letters to him requesting information about your accounts did they go to his attention?

A Yes, sir.

Q And he never responded to the letters, is that correct?

A No, sir.

Q And you saw him a number of times between 1968 and 1972, did you not?

A When he did not respond to my letters I started going over there, yes.

Q And you asked him why he wouldn't respond to your letters, did you not?

A Yes, sir.

Q What did he tell you?

A He told me Stoller was in charge of the account and unless Stoller approved of it he couldn't show me anything.

Was that in a conversation in which you and he

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Bonavia-cross

participated?

A We usually wound up in the second floor in a small conference room. It wasn't an office.

Q You knew, did you not, that Mr. Herbert was not the senior officer of the bank, didn't you?

A No, sir, he represented himself as as executive vice-president in charge of foreign accounts.

Q You knew there was somebody over him, didn't you?

A I asked to see -- I asked Mr. Mr. Munchman and Mr. Ballmer and they told me that Mr. Herbert was the man in charge of foreign accounts.

Q Did you tell either of those gentlemen that you had demanded copies of your accounts and that Herbert wouldn't give them to you?

- A Yes.
- Q What did they say to that?
- A They said I would have to see Mr. Herbert.
- Q They wouldn't help you, right?
- A No, sir.
- Q And from 1968 to 1972, did you demand of Stoller that he give you the accounts?
 - A Yes, I did.
 - O And he refused?
 - A He said he would get them and if I might add this-

		1728				
1	qb-4	Bonavia-cross				
2	Q	Yes.				
3	A	After the Training With the Pros problem, he				
4	told me th	at I couldn't even prove I had an account or had				
5	Training With the Pros, and I would never be able to.					
6	Q	At any rate, you asked Stoller and he didn't help				
7	you?					
8	A	That is correct.				
9	Q	Did you ever write a letter to Mr.Stoller asking				
10	him to get	you copies of the account?				
11	A	I saw him nearly every week.				
12	Q	What is that?				
13	A	I saw him nearly every week.				
14	Q	That is not my question. Did you ever write him				
15	a letter?					
16	A	I don't know if I wrote a letter or not. It is				
17	possible a	and it is possible I didn't. I don't know.				
18	Q	Do you have a copy of a single document that you				
19	wrote to	anybody, the bank, Stoller, Allen, anybody, request-				
20	ing inform	mation about your Swiss accounts?				
21	A	Checks, that is all I have.				
22	Q	Did you ever notify anybody connected with the				

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Swiss Government that the bank had refused to give

you information about your own account?

In 1972, yes.

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1	qb-5	Bonavia-cross				
2	Q	Whom did you notify?				
3	A	Dr. Stucki handled that.				
4	Q	Do you have a copy of a letter that Stucki wrote				
5	to the Swiss Government?					
6	A	I don't have any of his correspondence.				
7	Q	Do you know that he wrote to the Swiss Government?				
8	A	He told me he did.				
9	Q	Did he show you a letter he had written to them?				
10	A	. I can't read German, so it wouldn't make any				
11	difference.					
12	Q	Do I take it your answer is that you never saw				
13	a letter	that anybody wrote to the Swiss Government?				
14	A	I saw letters but I can't identify them since they				
15	are all :	in German.				
16	Q	Your principal checking account was in the America				
17	National	Bank in Rockford , is that correct?				
18	A	Yes.				
19	Q	Did there come a time when there was a transfer				
20	of funds	from the American National Bank of Rockford to the				
21	secret ac	count, 4318?				

All of my transferred funds went to Joseph J. Bonavia account. How the bank handled it, I don't know.

I am asking you, sir, did you not, on or about August 23, 1971, instruct the American National Bank of

	1730						
1	qb-6 Bonavia-cross						
2	Rockford to send \$74,507.50 to the Bank Hofmann in Zurich?						
3	A Yes, sir.						
4	Q You did?						
5	A Yes, sir.						
6	Q Did you not instruct them to credit that to the						
7	account 4318?						
8	A No, sir, I instructed them to credit it to Joseph						
9	J. Bonavia account.						
10	Q Where?						
11	A In Bank Hofmann.						
12	Q Did you find out that it had been credited to the						
13	Joseph G. Bonavia account?						
14	A In 1972 when I picked up my records, if I recall,						
15	I believe it had been credited to the 4318 account. I am						
16	not sure of that.						
17	MR. GOULD: Would you mark this for identification.						
18	(Defendant Stoller Exhibit X was marked for						
19	identification.)						
20	Q Are you telling us now that you instructed the						
21	bank to credit it to the Joseph Bonavia account, but you found						
22	out that it had been credited to the secret account 4318?						
23	A I said it possibly could have been credited to						
24	the secret account. I don't know how the bank handled it.						
25	There were a volume of documents that high. I can't						

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Bonavia-cross

remember every one of them.

qb-7

Q Well, sir, I will show you the document marked Stoller Exhibit X for identification. You have a copy of that in '72, do you not?

- A The bank --
- Q Just answer me whether you got it or not.
- A Yes. You asked me if it went into a numbered account and it did.
- Q It did. You know now that the money that went out of your account from the American National Bank and Trust Company of Rockford went into the secret account 4318, right?
 - A Yes, I know that now.
 - Q You didn't know it then, you are telling us?
 - A I sent it to my own personal account.

End 7A

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Yes.

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Didn't you turn those over to the Government?

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1	jgrf 5 Bonavia-cross 1736
2	A I had no way of knowing.
3	O So how did you put them in your tax returns?
4	A What I knew, what I had.
5	Ω What did you have?
6	A I had a trading slip in 1968. I reported the
7	tax on that. I never got any trading slips after that or
8	any documents.
9	O When you made up your 1969 tax return did you not
10	tell us yesterday that you included therein all income that
11	you got out of the disclosed account?
12	A I
13	Ω Yes or no.
14	A Any profits, yes.
15	Ω How did you know what profits you had if you
16	didn't heave the account?
17	A - I didn't know but if I sent money over there
18	and had it sent back I knew that was not profit.
19	Ω You mean you disclosed profits but you didn't have
20	any accounts?
21	A If I sent money over there and had it sent back
22	that was not profit. I had no knowledge of any profits
23	or losses.
24	Q How did you file them in your 1969, 1970 and 1971
25	tax returns if you didn't know what profits you had?
	A I filed everything that I knew and had documents
	and aboutents

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What documents did you have for the disclosed

- Λ Absolutely none.
- How did you refer to them in your tax returns?
- There were no transactions. I had no way of knowing that there was.
- So that you did not report to the United States Government any transactions in the disclosed accounts?

Yes, I did, from 1965 through 1968. I testified Α to that and I didn't get any documents after that.

O Mr. Ponavia, did you or did you not tell me yesterday in cross examination that you reported the transactions in the disclosed account to the United States Government on a current basis in 1968, '69, '70 and '71?

I said from 1965 to 1968 when I got documents from the bank I reported it. When I don't have any I can't report it.

So the answer now is that in your '68, '69, '70. '71 returns you did not report transactions in the disclosed accounts?

- I did not know of any transactions until 1972. A
- So you didn't report them?
- Α But I immediately started filing an amended

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Yes, sir.

All of it?

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jarf 8 Bonavia-cross 1739 Everything that they gave me. They gave me the slip showing over \$100,000 profit and I reported it. I paid the tax on it. You remember I showed you Stoller Exhibit X for identification. Are you telling us that this money, this \$74,507 was intended for your open account, the disclosed account? Α Yes, sir. You are sure of that? Yes, sir. And you didn't find out until '72 that it went into 4318, correct? That is when the next time I got documents. A But you didn't get the documents in '72, did you? O Yes, I got them in 1972.

two years later?

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Dr. STucki thought they would be out in six months. Through delays and hearings it was longer and the thing

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was still not settled. He petitioned the Court to have the documents sent here for this trial and they have to go back to Switzerland.

Didn't he have copies of them?

He didn't feel that photostats are what they needed.

So you never saw them until '74, is that right? Never laid eyes on them.

I saw them in his office.

In '72? 0

Yes, I was very interested to see what happened in the account. We went through them.

As I understand your testimony, everything that went on in the disclosed account was being kept secret from you, correct?

After 1968, yes.

That's right. 0

If it was being kept secret from you, will you tell me why you kept putting money into it?

My account was in debit. Mr. Stoller and Mr. Allen advised me that they guaranteed the debit on the

account.

to put the stock, that Herbert had worked it out.

If he could move his account to another bank, they would

it cleared out in a week. I believed him. I paid the

take the stock and if I would pay the debit, he would have

So we have it then you knew nothing whatever

I said, "You took the money so you put it back."

Mr. Stoller convinced me that they had a place

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No, sir. I didn't even know Mr. Stoller guaranteed

about what was going on in your disclosed account, correct?

Q Just yes or no.

debit and he didn't clear it out.

A No, sir.

the debit.

O You didn't know what was going on?

A No. sir.

O And then Stoller or Allen or somebody told you you had to put money into it, right?

Λ Yes.

O And you put the money into it?

A No, I resisted for a long time.

O But you did put the money into it, didn't you?

A When I thought they were going to take the stock out of my account, I did, with that promise.

Bonavia-cross

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gwrf. 4

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Bonavia-cross

1745

λ No, sir.

gwrf. 6

Q You hadn't the faintest idea about those things, correct?

A I what?

Q You hadn't any idea about it.

A Only what Mr. Allen told me and what Mr. Stoller would later admit to.

O I see.

During that period you kept sending fresh money over there from the account in Rockford, correct?

A On Training With The Pros I only sent the \$74,000 to cover the debit from when he put the money in, with the agreement that I would have my money back in full in one week. That was all. There wasn't a flood of money going over there.

O You are telling us now you sent money to cover a debit in the disclosed account or the undisclosed account?

A It was to cover a debit on Training With The Pros with the agreement that they had it sold for the \$400,000 that they owed me.

2 In the disclosed account or the undisclosed account?

A Fither one.

gwrf 8 Bonavia-cross 1747
O Didn't you get \$200,000 ---

 Λ Jerome Allen told me there was much more money than Phil Stoller told me.

He said, "Phil Stoller is lying to you. Franlin Mint sold for more money than that."

I demanded \$200,000 and Philip Stoller said
I didn't have it.

He said, "It will throw your account in a debit, but I can get it for you."

Jerome Allen said, "He is lying. There is more than \$200,000 there."

He had him send me a check for \$200,000, but I had sent Franklin Mint over there, that I had bought in this country, and paid for in this country.

Excuse me a minute. Just answer my question

1749 1 gab-2 Bonavia-cross 2 Is it your testimony today that you have told 3 the Government about all of your Swiss bank accounts, every single one? Yes, sir. 6 Good. Did you tell them about one called Wagon 7 Wheel? 8 Never heard of it. A 9 You never heard of an account called Wagon Wheel? 10 No, never heard of it. It is the first time I 11 ever heard the name. 12 But you say you told them about an account at 13 Bank Weiderman? 14 Yes. Α 15 The Hope account? 16 Yes. 17 Do you know somebody in Switzerland named Arnold, 18 Ted Arnold? 19 Yes, sir. He is at Bank Weiderman. 20 Did you open an account with Mr. Arnold at the 21 Bank Weiderman? Yes. 23 One or two.

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One.

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O Do you remember a meeting with Mr.Arnold at the Stanhope Hotel in 1971?

A I met with him at the Stanhope Hotel. I don't know the date.

Q Do I understand it to be your testimony, sir, that you never ordered any shares of Training With the Pros to be bought?

A No, sir, I didn't.

MR. GOULD: Would you mark this for identification, please.

(Defendant Stoller Exhibit Z was marked for identification.)

Q What was the code name on your secret account?

A Barbin.

Q I show you this paper which is Stoller Exhibit 2, and I ask you if you wrote the words Barbin and the date which appears under it?

A Yes, sir, that is my writing, but I never remember signing anything like this. To the best of my knowledge, I did not. I gave full instructions not to.

Q But that is your writing there, isn't it?

A What is the date on it?

Q Come on, Mr.Bonavia. I want to know, is that your writing there? Yes or no.

	1	gab-4	Bonavia-cross
	2	· A	Yes.
	3	Ω	And you signed that paper, didn't you?
	4	A	I signed the paper, but not the writing above it.
	5	Q	You mean you signed a piece of paper with that
	6	word Barbi	n, with the date and the writing above it
	7	A	I signed many things.
	8		MR. GOULD: I offer it in evidence.
	9		MR. SORKIN: No objection.
	10	A	I have no knowledge of signing that.
	11		MR. SORKIN: Your Honor
	12		MR. GOULD: No objection, right?
	13		MR. SORKIN: Yes. I think Mr. Gould will
	14	concede	
	15		MR. GOULD: I am going to show it to the jury.
	16	A	I can
	17	Q	Nobody asked you anything.
xxx	18		(Defendant Stoller Exhibit Z for identification
	19	was	received in evidence.)
	20		(Mr. Gould read from Defendant Stoller Exhibit
	21	Z in	evidence to the jury.)
	22	Q	That was your secret account, wasn't it, 4318?
	23	A	Yes, sir.
	24	Q	And you signed the paper, didn't you?
	25	A	I signed the paper, but I didn't see any writing

	1752
1	gab-5 Bonavia-cross
2	above it. I don't remember that.
3	Q Do you ever remember signing a piece of paper in
4	the middle
5	A I signed a lot of papers with Bank Hofmann with the
6	promise they would send me my documents in a week if I
7	signed it.
8	Q Do you remember signing this paper with nothing
9	above it?
10	A I signed a lot of piec es of paper that were in
11	triplicate. I did for Mr.Stoller. He would say
12	Q I am just asking you a question, Mr. Bonavia. Look
13	at this paper, Stoller Exhibit 7.
14	Is it your testimony today that when you signed the
15	word "Barbin" with your secret account number on it, there
16	was no typing on it? Is that what you are telling this jury?
17	A Sir, I would like to see the original of that.
18	Q Did you hear my question?
19	A I don't ever remember signing that and I say I did
20	not sign a document with the instructions to buy Training
21	With the Pros.
22	Q I see. So it is a forgery, somebody else put
23	the words?

No, it is my signature underneath.

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Thank you.

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A I don't know who wrote what is up above it.

MR. GOULD: I have no more questions.

THE COURT: Mr. Feldshuh.

CROSS-EXAMINATION

BY MR. FELDSHUH:

Q Mr. Bonavia, on March 27, 1974, your attorney, Mr. Cannariato, received a letter from Mr. Sorkin. On your cross-examination you understood that this letter contained an arrangement with the Government with respect to yourself and yourself being prosecuted for an alleged criminal violation of income tax.

You recall that, don't you, sir?

A My certified public accountant tell sme if I voluntarily filed amended returns, there is no prosecution, that the letter is meaningless.

Q Sir, addressing you to the last paragraph of that letter, you recall, do you not, and I ask you to look at it, please -- I now quote:

"In view of the above disclosures by Mr. Bonavia and his willingness to cooperate" -- you see those words, sir?

A Yes.

Q I take it, sir, that starting March 27, 1974, and thereafter you still have that willness to cooperate, is that

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ı	gab-7	Bonavia-cross							
2	right?								
3	A	I am not going to be bullied any more,	I am going						
4	to tell the truth and tell it like it is.								
5	Q	Sir, youstill have the willingness to	cooperate?						
6	A	That is cooperation, I guess.							
7	Q	All right. Now, sir, with respect to	Mr. Frank,						
8	you never knew Mr. Frank in 1967, did you, sir?								
9	A	No, sir.							
10	Q	You never spoke with Mr.Frank in 1968,	did you,						
11	sir?								
12	A	Not to my knowledge, no, sir, I didn't							
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Bonavia-cross

- Q The fact is, according to your testimony, the first time that you spoke with Mr.Frank was in December of 1969, isn't that right?
 - A I believe that was the first time.
- Q And your first contact with him was merely by way of a voice, isn't that right?
 - A Yes, sir.
- Q And it was in that telephone conversation, about which you testified yesterday , that Mr. Frank -- I will withdraw that.

Will you tell us again, please, in December of 1969 when you picked up the telephone from Mr.Stoller what did you say to Mr. Frank and what did Mr. Frank say to you?

- A I don't remember the exact conversation, but it
 was to the extent that you are going to go down there and testi
 fy and not to mention Training With the Pros --
- Q Will you speak up a little bit. I have a hearing impediment and if you don't speak up I won't hear you.
- A The conversation was to the effect to not mention Training With the Pros and not to mention Swiss accounts, to not get us any trouble with Swiss accounts.
- Q And he used the words "did not get us into trouble," sir?

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You remember that word "us"?

A Yes, I do.

Yes.

- Q Particularly that word?
- A Yes.

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- Q There is no question in your mind about this?
- A Because --
- Q You testified a moment ago that you don't remember the exact conversation. You do remember the word "us"?

A I never knew thennor do I know now if Mr.Frank ever had a bank account there and that "us" rang a bell in my mind that he might have a bank account there.

- Q Sir, did you ever know then or do you ever know now as to whether Mr.Frank had any of the Training With the Pros stock?
 - A No, sir.
 - Q You didn't know that either?
 - A No, sir.
- Q When you testified on your direct examination, did you not, that with regard to moneys allegedly being charged against your secret account in connection with your purchases of Training With the Pros, that those moneys were being divided among whom, sir?
 - A Sir, I don't know.

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Bonavia-cross

Q You don't remember? You don't remember your testimony, sir, to his Honor and the jury --

A I was told it was Allen, D'Onofrio -- Stoller, Allen and D'Onofrio , but I don't know.

Q Stoller, Allen and D'Onofrio. And no one else?

A I don't know of any others and I can't say where it went. I don't have my bank records to that effect.

O Forgetting the bank records and recalling your testimony, you didn't hear at any time, did you, that any of that money was going to Mr. Frank, isn't that the truth, sir

A That is true, I never heard that.

Q In this telephone conversation which was shortly before December 11, 1969, was it not? Do you remember the date December 11?

- A It was some time in the early part of December.
- Q Keep your voice up.

A It was some time in the early part of December.

It was either the day of the testimony or two weeks before.

Q And that was December 11, 1969. That was the day when you appeared before the grand jury in this courthouse, is that right?

A Yes, sir.

Q Then, sir, in connection with that appearance in that telephone conversation, you have given us all of the

1758
qb-4 Bonavia-cross
telephone conversation, have you not, sir?
A Yes, sir.
Q In that telephone conversation Mr.Frank didn't
tell you to lie, did he? Did he say lie, perjure yourself?
A He told me what not to say.
Q He told you, you claim, what not to say. But
he didn't tell you to lie, isn't that right, sir?
MR. SORKIN: I am going to object. I think that
is for the jury to decide.
Q Did Mr.Frank
THE COURT: Just a moment.
THE WITNESS: I don't know
THE COURT: Mr. Bonavia, the lawyer for the
Government is objecting. Hold up so we can sort ourselves
out.
The question, it seems to me, has been posed twice
I think what the lawyer wants to know is: Did he use the
words lie or perjure yourself, is that right?
MR. FELDSHUH: That is right.
THE WITNESS: Ni, sir.
THE COURT: Did he use those words as best you
can recall?
THE WITNESS: No, sir.
MR. GOULD: Could I be excused for two or three

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minutes? I have an urgent telephone conversation. I will leave Mr. Robinson here.

THE COURT: Yes, sir.

Q Sir, prior to 1969, this occasion, you had heard about the Fifth Amendment of the Constitution of the United States, had you not?

A Yes.

Q As a matter of fact, in 1967, when you testified to the Securities and Exchange Commission you were advised by the representatives of the Securities and Exchange Commission --

A Yes, sir.

Q -- that you need not answer on the ground that you might incriminate yourself, you heard that at that time, didn't you, sir?

A Yes.

Q So that by the time you spoke with Mr.Frank on the telephone in December of 1969 you were fully aware of your right not to speak, isn't that correct?

A Yes, but I was given no choice on that by Mr. Stoller. That wasn't the whole story.

- Q But you were aware of that right, is that right?
- A Yes, sir.
- Q And it was in that telephone, as you reported it,

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that Mr.Frank said to you, "Why don't you take the Fifth Amendment," do you remember that?

A Yes, he did.

Q He said that to you?

A Yes, he did.

Q So that as far as you were concerned you had a choice to do that or not, isn't that right?

A Yes, but that was later discussed not with Mr. Frank.

Q It was not discussed with Mr.Frank?

A No, sir.

Q You knew Mr. Frank was a lawyer at that time?

A Yes.

Q And he mentioned those words to you and you understood him as coming from a lawyer?

A Yes, sir.

Q The very next contact you had with Mr. Frank, according to your testimony, was after you testified to the grand jury, is that right?

A Yes, sir.

Q Tell me, sir, where was that meeting? This is December 1969. Where was it?

A Excuse me.

o Sir?

1	qb-7		1761 Bonavia-cross
2			THE COURT: Do you want a glass of water?
3			THE WITNESS: Yes, your Honor.
4			MR .FELDSHUH: I have some water here, your Honor
5			THE COURT: He is getting some for him. Thank
6	you.		
7			MR. FELDSHUH: All right.
8		Q	ARe you all right, Mr. Bonavia?
9		A	Yes.
10		Q	May I proceed?
11		A	I think I can make myself be heard.
12		Q	Okay, sir. Sir, in the course of your testimony
13	you to	old h	is Honor and the jury that you didn't take the
14	Fifth	Amend	dment because you thought you would go to jail,
15	isn't	that	right?
16		A	Yes, Mr. Stoller told me I would.
17		Q	Do you remember ever taking the Fifth Amendment,
18	sir?		
19		A	On a couple of items I think I did.
20		Q	I am sorry?
21		A	On a couple of items I did.
22		,	MR. FELDSHUH: With your Honor's permission, I
23	think	we w	ill wait for a minute.
24			THE COURT: Yes.

All right, sir?

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A Yes.

Q Now, sir, when you went before the grand jury in December of 1969, you decided to testify, as you did, because you did not choose to take the Fifth Amendment, isn't that right?

- A Yes, because I was told --
- Q Keep your voice up, please.

THE COURT: The answer is yes. Next question.

Q Sir, do you remember this question being asked of you and you giving this answer, and I am now referring to 3517A, which is a transcript of your testimony to the grand jury on December 11, 1969, at Page 76:

"Q Is it your answer that you don't know whether you have an account any more at the Forget Company?

A My answer is that I refuse to answer that question on the Fifth Amendment."

Do you remember being asked that question and giving that answer on December 11,1969?

- A Yes, sir, I took the advice given to me on that.
- Q You waited up to Page 76 of the transcript to take the advice. You had changed your mind at that time about taking the Fifth Amendment, is that right?
 - A Yes.
 - Q You changed your mind.

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1	qb-9	Bonavia-cross
2	A	Yes.
3	Q	I was asking you before, sir, where did you mesc
4	Mr.Frank i	n December of 1969 after your grand jury testimony?
5	A	I believe it was in his office. I think I have
6	only met M	r.Frank three times. I believe it was in his
7	office. I	am not sure. It might have been at East 60th
8	Street.	
9	Q	You are not sure whether it was in his office
10	or not?	
11	A	I amnot sure, but I have only met him three times.
12	Q	Don't you remember your testimony just the day
13	before yes	terday on your direct testimony?
14	A	Yes, I think it was in his office.
15	. Q	You said you were in his office.
16	A	Yes.
17	Q	That is right up on the top of your mind?
18	A	Yes, sir.
19	Q	This is an event that occurred in 1969, right?
20	A	Yes, sir.
21	Q	Do you know what building Mr. Frank's office was
22	in?	
23	A	I think it was on East 44th Street or West 44th
1	I	

Either east or west? Q

Street.

24

I don't see

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1	dp-10 pollavia-cross	
2	A I don't know. I went there with Mr.Stoller.	
3	Q When you met with Mr.Frank, as you say, was any-	
4	body else in the room?	
5	A No, I don't remember anyone else there.	
6	Q Nobody else was in the room?	
7	A We stopped and picked Mr. Allen up or met him	
8	in Mr. D'Onofrio's office after we left there, so I don't	
9	how Mr. Allen could have been there.	
10	Q Let me understand, sir. In Mr. Frank's office	
11	you saw Mr. Allen was there?	
12	A No, I am sure he was not. I don't recall.	
13	Q There was only Mr. Stoller, Mr. Frank and your-	
14	self, is that right?	
15	A That is the way I recall it.	
16	Q And no one else?	
17	A Right.	
18	Q Now, sir, tell us what Mr.Frank said to you on	
19	that occasion.	
20	A He asked me how the testimony went and what some	
21	of the questions were and what I answered, what my answers	
22	were.	

- It was a rather casual conversation, wasn't it? Q
- Yes. A
- Very casual. How long did it take?

1971.

	-5 12	1766	
1	qb-12	Bonavia~cross	
2	Ú	It might have been in 1971 or '72?	
3	A	Yes, I was there to see you about my son.	
4	Õ	I will ask you a few questions about your son	
5	because yo	ur son had been mentioned here.	
6	λ	Not that son.	
7	Q	This is a different son, I see. You have two	
8	sons, do y	ou not, sir?	
9	A	Yes, sir.	
10	Q	One son's name is Paul?	
11	A	Yes, sir.	
12	Q	It is the fact, is it not, that Paul wanted to go	
13	to law sch	001?	
14	A	Yes, sir.	
15	Q	As a matter of fact, he wanted to go to Harvard	
16	Law School, is that correct?		
17	A	Yes, sir.	
18	Q	And in 1971 you spoke with me on the telephone,	
19	did you no	t?	
20	A	Yes, sir, and you were very kind to me.	
21	Q	You asked me if I would recommend to the Harvard	
22	Law School	that he be admitted as a student there?	
23	A	Yes, sir.	
24	Q	I asked to meet your son, didn't I?	
25	A	Yes, you did.	

THE COURT: I say he already answered by the time

1	qb-14	Bonavia-cross	
2	you object	ed and he is going to something else.	
3	Q	You say you came to the office in 1971 and you	
4	visited me	, is that right?	
5	A	Yes, sir.	
6	Ω	In that visit you thanked me for the efforts I	
7	undertook		
8		MR. SORKIN: Objection.	
9		THE COURT: Yes.	
10		MR. FELDSHUH: I will withdraw it.	
11		THE COURT: Let's get to something else.	
12	Q	On that occasion you met Mr.Frank?	
13	A	As I was leaving your office his door was open	
14	and I brie	efly stopped in and said hello.	
15	Q	You said hello and passed the time of day?	
16	λ	I don't think I was there five minutes.	
17	Q	There wis nothing said about Training With the	
18	Pros at all?		
19	A	Nothing.	
20	Ő	Sir, when for the first time did you tell anybody	
21	about this	s telephone conversation allegedly taking place in	
22	December o	of 1969?	
23	A	Oh, it was due ag the questioning, probably July,	
24	I would s	ay, of 1974, but I am guessing at that, gradually	
25	during th	e questioning.	
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Q July of 1974?

A I only answered questions and not volunteered anything so I had to wait for the question to be asked.

Q Nowever, the subject matter in July of 1974 was
Training Withthe Pros, wasn't that one of the subjects that
was discussed?

A Yes, sir.

Q So between December of 1969 and July of 1974, a period of upwards of five years, as you see, you had never mentioned this telephone conversation to anyone, had you, sir?

A No, sir.

Q And you had never mentioned --

A It was 1969, that's right.

Q 1974.

A Yes.

Q And you had never mentioned about the alleged meeting in Mr. Frank's office in 1969 to anyone?

A No, sir.

Q So we take it that it is correct that you are now giving your recollection as to words used almost six years ago, is that a fair statement, sir?

A Yes.

Q That is a fair statement, isn't it, sir? Right?

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Bonavia-cross

A Yes, sir.

qb-

Sir, you asked me what was said in the conversation and I think we only discussed the testimony.

Q I am sorry, sir. I am missing you.

A You only let me answer as far as the testimony.

Training With the Pros was brought up in that conversation.

9b am jarf 1

Bonavia-cross

O Are you finished?

A I asked what was going to be done about the Training With The Pros put into my account and Mr. Frank said, "Stick with this man," pointing to Mr. Stoller, "He is the best promoter in New York and he will get your money back in Training With The Pros. Do what he says."

As we were walking out a comment was made that,
"You know, Mr. Herbert is going to be president of the bank
pretty soon and we will all make a lot of money," and
we said goodby.

O It is correct that a few minutes ago when I asked you if this was a casual conversation you said it was and now you suddenly remember this additional stuff?

A In regard to the testimony.

MR. SORKIN: Objection.

THE COURT: Just a moment, gentlemen. I think there may be a hearing problem here. I believe, Mr. Bonavia, you are trying to tell us again about what was said in Mr. Frank's office in December '69 after you went before the grand jury, right?

THE WITNESS: Yes.

THE COURT: I think Mr. Feldshuh was still talking about the 1971 meeting about Harvard Law School and your son Paul, isn't that right?

jarf 2 Bonavia-cross 1 MR. FELDSHUH: I beg your Monor's pardon but 2 I think I was referring to '69 and you understand my question, 3 did you, as addressing your mind to 1969? 5 THE WITNESS: Yes. THE COURT: All right. 7 Mr. Bonavia, without reporting again the conversa-8 tion in Mr. Frank's office, it is the fact that you didn't 9 discuss anything about that meeting or tell anybody 10 about it until July 1974, isn't that right? That is correct. 11 Α 12 So that if the word "us" was different, then 13 it would change the sense of your testimony? 14 MR. SORKIN: Objection. 15 THE COURT: Sustained. 16 0 Mr. Bonavia, vou remember Mr. Frank particularly 17 using the word "us"? 18 Yes, because I thought that was telling me he had 19 a Swiss account which I don't know if he had or has or 20 not. 21 He told you in that conversation that he had a Swiss account? 23 A I interpreted that as saying or meaning that he 24 had a Swiss account and I know nothing of any Swiss account

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he had or has or ever had.

1 jarf 3 . Bonavia-cross 2 MR. GOULD: I lost part of his answer. All I was 3 trying to do is get it read back. (Answer read.) 5 THE COURT: Can we move along? 6 0 That was your interpretation, you didn't hear it? 7 I didn't hear it. I don't know if he had an 8 account. 9 Ü This was your interpretation? 10 The "us" I remembered because of that, yes. Α 11 0 July 1974, did you meet with Mr. Sorkin? 12 Yes. A 13 You also met with Mr. Doonan at that time? 14 Yes. I don't know if he was there at that time. Α 15 At various times Mr. Doonan was present. 16 And it was there that you brought up for the first 17 time this business about Mr. Frank? 18 I was asked about Mr. Frank. 19 You also had a meeting with Mr. Sorkin, did you 20 not, in February of 1974? 21 Α I probably did. I don't remember exactly. It is a fact is it not, that on a certain Sunday 23 in February 1974 you spent three hours talking with Mr. 24 Doonan and Mr. Sorkin, do you remember that, sir? 25 Yes, I do.

1	jarf 4 Bonavia-cross
2	O And you were discussing all your affairs, were
3	you not?
4	A I was answering questions.
5	O Ouestions that they posed to you at that time?
6	Λ Yes, sir.
7	Q For a full three hours?
8	Λ Yes, sir.
9	Ω And it is the fact, and it is correct, that it was
10	until July of 1974 that you mentioned Mr. Frank?
11	MR. SORKIN: I object. This has been asked
12	a number of times. *
13	THE COURT: I think that is the real point, and $\omega \epsilon$
14	will drop it.
15	MR. FELDSHUH: May I have a moment, your Honor?
16	THE COURT: Yes.
17	MR. FELDSHUH: Will you mark these please
18	Defendant Frank's next letters for identification.
19	THE COURT: Do you wish them marked seriatum?
20	MR. FELDSHUH: Individually, sir.
21	(Defendant Frank's Exhibits K, L and M marked
22	for identification.)
23	Ω Mr. Bonavia, I show you Defendant Frank's Exhibit
24	K for identification and I ask you to look at it, sir.
25	Could you tell me, is that your signature?

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jgrf 5 Bonavia-cross	
Λ Yes. Can I see the rest of that?	
Q Just a minute, please.	
I show you, sir, Defendant Frank's Exhibit h	
for identification and I ask you, sir, is that your	
signature?	
A Yes, sir, it is.	
O And I ask vou, sir, as to Frank's Exhibit M for	
identification, is this your signature?	
A Yes, sir, it is.	
MR. FELDSHUH: I offer Exhibits K, L and M in	
evidence.	
MR. SORKIN: Is he just offering the signature	
or the exhibit?	
MR. FELDSHUH: I am offering the exhibit.	
MR. SORKIN: I don't think there is a proper	
foundation laid.	
THE COURT: If you want to ask any questions on	
voir dire, you may.	
MR. SORKIN: I do.	
VOIR DIRE EXAMINATION	
BY MR. SORKIN:	
O Mr. Bonavia, let's take K. Did you type out that	
agreement or write out that agreement? If you didn't,	
who did?	

	1776
1	jgrf 6 Bonavia-cross
2	THE COURT: One thing at a time.
3	MR. FELDSHUH: I object to that. That is not
4	proper.
5	THE COURT: I already ruled on it. I agree with
6	you. One question at a time. Take your choice.
7	O Did you write out that agreement?
8	A No, sir.
9	MR. GOULD: If your Honor please, that is not
10	appropriate on the voir dire, is it?
11	THE COURT: It is a little late to object to
12	that.
13	MR. GOULD: I didn't hear it.
14	THE COURT: I didn't know you didn't hear it.
15	MR. GOULD: I object now. I move to strike out
16	his answer and I suggest with all respects that it is not
17	proper voir dire.
18	O Did you prepare that document
19	THE COURT: Just a moment. Honestly, the three
20	of you are really pressing your luck here. You settle
21	down and wait a minute. There is an objection somewhat
22	belatedly because the lawyer says he didn't hear.
23	I disagree. You have been asking and any lawyer
24	should be permitted to ask in my opinion whether he had any-
05	

thing to do with drafting a document. I am going to permit

1 jarf 7 Bonavia-cross 2 it as has been permitted to defense counsel heretofore. 3 Let's settle down. What is next? 5 Did you prepare that agreement? 6 I did not prepare this document. This appears 7 to be my signature. I would say it is my signature 8 but I don't ever recall this typing above it. It is my 9 signature and Ernest Ballmer of Bank Hofmann. 10 I show you L, would you look at that please, 11 Mr. Bonavia. Did you prepare that document? 12 No, sir, I didn't prepare the document. However, 13 I signed it with mv knowledge. 14 THE COURT: In other words, you remember signing 15 the document with those contents? 16 THE WITNESS: Yes, sir, it was M&H Studios. 17 THE COURT: All right. 18 Would you look at M, Mr. Bonavia. 19 Do you remember signing this document with the 20 letter M above it? 21 Yes. I would like to explain this when I have 22 the opportunity. 23 0 You will get the opportunity. 24 MR. SORKIN: I have no objections as to L 25 and as to M. However, I do object as to K.

1 jarf 8 Bonavia-cross THE COURT: Mr. Sorkin, before we hear anything 3 ffrom either of these lawyers for the defense may I point 4 out that a few moments ago Mr. Gould went through this with a similar problem where he identified his signature only. Do you remember that? MR. SORKIN: That is correct. THE COURT: You didn't object to that.

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MR. SORKIN: We have a reason for not objecting to that, your Honor. We want that document in evidence.

THE COURT: I wonder. We can't be playing games here continually.

MR. SORKIN: I understand that.

THE COURT: Let me see these documents again. I want to see all of them.

What you are saying is that you object to K, Frank's Exhibit K for identification, but you don't object to L and M, correct?

MR. SORKIN: That is correct, your Honor.

THE COURT: I am going to overrule your objection to K. However, in so saying or so ruling I recognize that you have every right to bring out even further than has already been brought out that the witness doesn't recall ever having seen the contents of the document

FOLEY SCUAHE, NEW YORK, N.Y. CO 7. 4580

1	jarf 9 Bonavia-cross
2	though he identifies his signature.
3	(Defendant Frank's Exhibits K, L and M received
4	in evidence.)
5	MR. FELDSHUH: May I read these exhibits to the
6	jury, your Honor?
7	THE COURT: You certainly may.
8	(At this point Mr. Feldshuh read Defendant Frank's
9	Exhibit K in evidence to the jury.)
10	MR. FELDSHUH: Will you concede A/O means "Also
11	of"?
12	MR. SORKIN: Yes.
13	O Mr. Bonavia, you testified that you turned over
14	all of your records to the Government, didn't you, concerning
15	TWP, your relationship with Bank Hofmann?
16	A Yes, sir.
17	O With regard to this agreement of May 27, 1971,
18	wasn't this one of the papers you turned over to the
19	Government?
20	A I don't know if it was in there or not. I don't
21	know. Mr. Sorkin or Mr. Doonan or one of the attorneys
22	would have to
23	O You believe you turned it over?
24	A I turned over everything that Bank Hofmann gave
25	me.

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1	jarf 10	В
2	Ď.	With respect to
3.	signed an	agreement cert
4	it, would	you not, sir,
5	Α	Bank Hofmann w
6	I argued a	and insisted to
7	Ω	Even with resp
8	Α	Not the
9	0	Let me finish
10		Which bound yo
11	your accou	unt if you didn
12	money in	it, even that a
13	of?	
14	Λ	No, sir, I had
15	Ú	Did you ask fo
16	A	Yes, sir.
17	ú	Did you get a
18	Α	They told me t
19	Ω	Do you remembe
20	on May 27	, 1971 in Zuric
21		MR. SORKIN: O
22	answered.	
23		THE COURT: Ye
24		MR. FELDSHUH:
	11	

		1780
jarf	10	Bonavia-cross
	Q	With respect to your business experience if you
sigr	ned an	agreement certainly you would ask for a copy of
it,	would	you not, sir, to keep in your files?
	Α	Bank Hofmann would never give me a copy.
I ar	gued	and insisted to them many times and they said no.
	Ω	Even with respect to an agreement which bound you
	Α	Not the
	0	Let me finish my question, please.
		Which bound you to the risk of a sellout of
your	acco	unt if you didn't maintain a sufficient amount of
mone	ey in	it, even that agreement you didn't ask for a copy
of?		
	Λ	No, sir, I had no copies.
	Ú	Did you ask for a copy before you signed it?
	A	Yes, sir.
	Q	Did you get a copy before you signed it?
	Α	They told me they don't get copies.
	Ω	Do you remember that you made this agreement
on !	lav 27	, 1971 in Zurich?
		MR. SORKIN: Objection, already asked and
ansv	wered.	
		THE COURT: Yes, I agree.

THE COURT: Yes.

Your Honor sustained that objection?

		1781
1	jarf 11	Bonavia-cross
2	. 0	Did you have a discussion with anvone concerning
3	the subje	ect matter of Defendant Frank's Exhibit K on or
4	about May	/ 27, 1971 before you signed it?
5	À	I can't see what it is.
6	0	Here you are, sir.
7		MR. SORKIN: A discussion with Frank?
8		MR. FELDSHUH: Anyone.
9	A	I don't recall discussing this with anyone.
10	0	Even seeing this today doesn't refresh your
11	recollect	tion, other than the recognition of your signature
12	on here?	
13	λ	Yes, I don't recognize the typing.
14		(At this point Mr. Feldshuh read Defendant Frank's
15	Exhibit I	in evidence to the jury.)
16	n	Mr. Bonavia, with regard to Exhibit L, didn't
17	you turn	that over to Mr. Sorkin when you delivered the
18	papers?	
19	Α	If Bank Hofmann gave it to me he has it, yes.
20	n	And you gave it to him?
21	λ	Yes.
22		(At this point Mr. Feldshuh read Defendant
23	Frank's E	xhibit M in evidence to the jury.)
24	0	Did you sign Exhibit M in Zurich on May 27, 1971?
25	Λ	Yes, sir, 1 did.

1	jqrf 12 Bonavia-cross
2	Q And you remember as of that date authorizing
3	15,000 shares of Sensory Systems, also Training With The
4	Pros
5	A Yes, sir.
6	0 to be put into your account
7	A That was not the agreement. There was an agree-
8	ment on this. I did sign this letter, yes.
9	O You did sign this letter?
10	A Yes, but with an agreement that was to
11	be executed that day.
12	THE COURT: What did you understand this Sensory
13	Systems to mean? Everybody seems to agree and you agree
14	that it meant Training With The Pros but what was the use
15	of that name all about?
16	MR. GOULD: It changed names, your Honor.
17	THE COURT: I am sure you can tell me but I am
18	not asking you. I am asking Mr. Bonavia.
19	What did you understand?
20	THE WITNESS: Just to change the name of the
21	company.
22	THE COURT: Who told you about that?
23	THE WITNESS: Mr. Stoller.
24	THE COURT: When did he tell you?
25	THE WITNESS: I don't know when they changed the

1 jgrf 13 Bonavia-cross 2 name. THE COURT: It must have been, judging from these documents that Mr. Feldshuh is asking you about, sometime 5 before May 20th or thereabouts of '69, right? 6 MR. FELDSHUH: No, sir. This document is May 27, 1971. THE COURT: I beg your pardon. I don't have a 9 copy but I don't know. 10 I stand corrected, '71. Forgive me, Mr. 11 Bonavia. 12 THE WITNESS: The name change was 1971? 13 MR. FELDSHUH: On or about that time. 14 THE WITNESS: I don't know. 15 THE COURT: You don't know? 16 THE WITNESS: I don't know when the name change 17 was. 18 THE COURT: What was the name changed from? 19 THE WITNESS: Training With The Pros. 20 THE COURT: I see. So finally in '71 they changed 21 the name from Training With The Pros to Sensory Systems? 22 THE WITNESS: Yes, your Honor. I don't know 23 why they changed though. I had no contact with any of the 24 officers.

THE COURT: But you heard about it sometime in 1971

1	jqrf 14 Bonavia-cross
2	right?
3	THE WITNESS: Yes, when the name was changed.
4	THE COURT: And you heard about it from Stoller
5	and do you remember where you heard it?
6	THE WITNESS: In New York, as I was referring to
7	Training With The Pros. I wanted it out of my account.
8	Something had to be done and he said, "It isn't Training
9	With The Pros any more." He said, "It is now called
10	Sensory Systems."
11	THE COURT: Was that up there at that apartment
12	on East 60th Street?
13	THE WITNESS: I am not sure if it was there or
14	et Allen's apartment.
15	THE COURT: On 72nd Street?
16	THE WITNESS: Yes.
17	THE COURT: Was anybody there besides Stoller?
18	THE WITNESS: Allen would have been there.
19	THE COURT: Anybody else?
20	THE WITNESS: I don't know if that is the meeting
21	when Mr. Feeney was there.
22	THE COURT: Feeney possibly was there.
23	THE WITNESS: I don't know. I don't know when
24	the name was changed. He might have told me six months
25	later, your Honor.

1 jarf 15 Ponavia-cross 2 THE COURT: I am just like the lawyers, I didn't 3 ask you that. MR. GOULD: Now you know. 5 THE COURT: You think that was in the spring of 6 '71 that they told you that? 7 THE WITNESS: I don't know. I don't know when it 8 was. I don't know when the name was changed. 9 THE COURT: I am not asking you when the name 10 legally, if it were legally changed, I want to know when 11 you first heard about it and you say this was from Stoller. 12 THE WITNESS: Yes. 13 THE COURT: I want to know about when, as best 14 you remember. 15 THE WITNESS: Gee, your Honor, I don't know. I 16 really don't. 17 THE COURT: Let me ask you this: Was it after 18 you heard there was a certain amount of trouble about 19 Training With The Pros, with the SEC and perhaps other 20 authorities? 21 THE WITNESS: No, the only trouble at the time 22 that I knew was trouble with the stock having been 23 put in my account. 24 THE COURT: I didn't ask about that kind of

trouble. My question is: Was it after there started

jarf 16 Bonavia-cross to be some investigations or some inquiries from the Securities and Exchange Commission or perhaps the Justice Department, if you know? THE WITNESS: Your Honor, I don't know if there were any investigations or inquiries at that time. THE COURT: We will suspend for luncheon, ladies and gentlemen, 2:15. (Luncheon recess.)

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AFTERNOON SESSION

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2:15 p.m.

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(In open court, jury present.)

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JOSEPH BONAVIA, resumed the stand

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and testified further as follows:

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MR. FELDSHUH: May I proceed, your Honor?

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THE COURT: Yes, sir.

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CROSS EXAMINATION

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BY MR. FELDSHUH (Continued):

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Q Mr. Bonavia, do you remember your testimony back on December 11, 1969 to the grand jury? Do you remember

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that occasion, sir?

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A Yes, I remember the occasion.

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O You remember on that occasion testifying about Training With The Pros?

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A Yes, sir.

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O You remember being asked questions by the United States Attorney about Training With The Pros at that time;

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A Yes, sir.

is that correct?

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O Now, sir, I show you 3517 and I ask you, sir,

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to look through 3517 and point out to me where you were asked questions by the United States Attorney with respect

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to Training With The Pros and what answers you gave to those

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questions.

MR. SORKIN: That is quite extensive, your Monor.

I will stipulate if Mr. Feldshuh wants a stipulation. It is quite lengthy. If Mr. Feldshuh wants him to go through it, I have no objection.

MR. GOULD: Will you stipulate there is nothing in there about Training With The Pros?

MR. SORKIN: I will stipulate there is no mention of the stock Training With The Pros.

MR. GOULD: Or the words Training With The Pros.

MR. SORKIN: The words Training With The Pros.

MR. GOULD: That is all we want to know.

MR. SORKIN: Yes.

A If you say there was not, there was not.

O The United States Government has stipulated, Mr. Bonavia --

MR. FELDSHUH: I have no further questions, your Honor.

THE COURT: Any direct, Mr. Sorkin?

MR. SORKIN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. SORKIN:

O Mr. Bonavia, let me show you what was marked as Frank's Exhibit N evidence.

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Do you recall being shown that and asked if that was your signature?

A Yes, sir.

gwrf 3

- Q Where was that prepared?
- A This was prepared in New York.
- O Where?
- A East 60th Street.
- Q When it was prepared did it have this blocked out portion in there next to Messrs. blank and Allen?
 - A No, sir, that said Stoller and Allen.
 - O Who blocked out the name Stoller?
- A To the best of my knowledge, Bank Hofmann because this is the way it was when Bank Hofmann gave it to me in 1972.
- MR. SORKIN: It is in evidence. I show it to the jury (handing.)
- O Mr. Bonavia, you were also asked I believe by Mr. Gould or Mr. Feldshuh, I'm not sure which, or it came out in your cross examination about guaranteeing the debit.

Do you recall talking about that?

- A No.
- Q Let me ask you this: You said your account was debited and Mr. Allen told you that it shouldn't have been debited, that you had money in there; do you recall

(Pause.)

Are you telling us, sir, that they are papers

Did you finish your answer now?

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Bonavia-redirect

THE COURT. What is the basis of your objection,

Mr. Gould?

MR. GOULD: No foundation has been laid, your Honor, as to the defendant Stoller.

THE COURT: I don't think --

MR. GOULD: These are not shop book documents, your Honor. He says he got them in '72, certainly not in the regular course of anybody's business.

THE COURT: I don't know if that is true either.

The only point I understand you to make, he never discussed this with Mr.Stoller, which I will accept for now. I don't know what that has to do with it, in any event.

MR. FELDSHUH: Also your Honor, there was a comment made about blocked out material. The witness doesn't know what was underneath the blocked out material.

THE COURT: I agree with that. He so stated.

MR. GOULD: So it is hearsay. We don't know anything about it.

THE COURT: However, my problem is I don't see what the relevance of these documents is.

MR. GOULD: That is a different ground. I wanted to exhaust my point on the foundation and on the attribution to Stoller.

THE COURT: I don't think there is any evidence

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2 that there is any attribution to Stoller.

MR. GOULD: He tried to do it, your Honor.

THE COURT: In any event, I won't receive No. 64 for the reason that it is impossible for me to even understand to whom it is addressed.

For that simple reason alone, without considering your other objections or other grounds, I will sustain your objection to 64.

Let me ask you, Mr. Bonavia, do you ever remember getting a letter like that, an original letter?

me any correspondence. I did not get a letter.

THE COURT: I understand you have been telling us that. I have my reasons for focusing on this letter which we call 63 for identification. I take it --

THE WITNESS: No, sir, I did not get any original.

There is an original in the copy that the U. S. Attorneys

have.

THE COURT: I don't follow that.

THE WITNESS: This is a photostat. This is the only thing they sent because it was blocked out with the photostat.

THE COURT: Let's go back. What I am trying to establish is -- and though I can guess what you are going to

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24 25 in the ordinary course in the mail the original of that letter that you can recall?

THE WITNESS: No, sir, I cannot say that.

answer, I think it is better I ask. Did you ever receive

THE COURT: All right. So what you are telling us is this was a photostat and through your lawyers and your efforts you finally got this from Bank Hofmann.

THE WITNESS: Yes, sir.

THE COURT: All right. Thank you very much.

I will sustain the objection to 63 as well.

BY MR. SORKIN:

Q Mr. Bonavia, would you look at Government Exhibit 60 previously marked and I ask you have you ever seen that before?

MR. GOULD: You mean for identification?

MR. SORKIN: Yes, Mr. Gould.

Q Can you identify that document?

A Yes, sir.

Q Have you ever seen the original of that document?

A No, sir.

Q Where did you get that document?

A This document I got from Bank Hofmann.

Q From your Barbin account?

A Yes, sir.

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Bonavia-redirect

	Q	When
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- A In 1972.
- Q 1972.
- A Yes, sir.
- Q Do you see a signature to the bottom left?
- A Yes, sir.
 - Q Could you identify that signature?
 - A Yes, Jerry Allen and there is --
 - Q Jerry Allen. How many times have you seen Mr. Allen sign his name?
 - A Many times.
 - Q Can you recognize that as his signature?
 - A Yes, that is his handwriting.
- MR. SORKIN: Your Honor, we offer 60 in evidence.

(Pause.)

- MR. GOULD: I have no objection to it. Mr.
- 18 Feldshuh, do you want to look at it?
- MR. FELDSHUH: Yes.

(Pause.)

Honor wishes.

- MR. FELDSHUH: I object to it on the grounds it is not binding on the defendant Frank.
- MR. SORKIN: Your Honor, it is being offered as
 against Frank as well. I will state my reasons if your

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SCHARE, NEW YORK IN Y. CO 7 4580

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Bonavia-redirect

THE COURT: So the posture is that Stoller does

not object, but Frank does.

MR. FELDSHUH: Yes, your Honor.

THE COURT: All right. 60 will be received.

(Government Exhibit 60 for identification was received in evidence.)

BY MR. SORKIN:

Q Mr. Bonavia, would you look at the handwriting to the right.

A Yes, sir.

Q Can you identify that handwriting, the words "I agreed 4/29/70"?

A I am not good at identifying handwriting, but it looks to me like Mr.Stoller's handwriting.

MR. GOULD: I object to that and move to strike it out.

THE WITNESS: I can't really identify it.

MR. GOULD: May I have it stricken, your Honor?

THE COURT: He says he can't identify it.

MR. GOULD: He said something more.

THE COURT: He said something else later, which is what I accept. I would suggest to you that is as good if not better as striking out the former.

MR. GOULD: Very good. Thank you.

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Bonavia-redirect

(Mr. Sorkin read from Government Exhibit 60 in evidence to the jury.)

Q Mr. Bonavia, you mentioned that with respect to your 1967 testimony before the SEC that you had a conversation with Mr. Stoller before you went before the SEC.

A Yes, sir.

Q And you testified that you did not tell the truth before the SEC in '67. Do you recall that?

A Yes, sir.

Q Tell us, please, the conversation that you had with Mr.Stoller, where it was and who else was prsent, if anyone?

- A It was only Mr.Stoller and myself. He said that
- Q Keep your voice up, please.

A He wanted to help me, he was my friend. He took
the part of my friend, that I knew of an Irving Cott in
Canada who had threatened me once before on Allegheny Mining,
and I had expressed fear of Irving Cott.

- Q Is that the conversation you had with Mr.Stoller?
- A No.
- Q Just tell us the conversation. I am sorry.
- A Mr.Stoller told me'that he had heard from Irving
 Cott and Farrell Vincent from Forget in Montreal, Canada.

They were having considerable trouble and Stoller and Allen were doing a lot of business at Eljay Forget, some in unregistered stocks.

MR. GOULD: Is this supposed to be a conversation --

THE WITNESS: This is what Mr.Stoller told me.
MR. GOULD: Thank you.

A And he said they were very upset that I was going to testify and possibly get L.J. Forget in trouble. I said"I can't imagine how I would get L.J. Forget in trouble."

He said, "Well, if we get Jerry and I in trouble,
Jerome Allen, that it will lead to L.J. Forget because we
are being our business out of L.J. Forget in Canada now.
They will show that you traded this gold. They won't be able
to show you made any profits because you didn't trade in
gold. That is illegal in America. Irving Cott has called
several times to relay this message to you."

He said, "I am real sorry to have to tell you this.

You know, I am on your side, but you know Irving Cott and

Irving Cott will get you." He said, "Don't involve anything

concerning L.J. Forget, any stock of theirs or anything

that might cause trouble for Stoller or Allen." And I

asked if these people mean business. He referred to Mr Cott

and said, "You know Mr. Cott and you know what a rough son

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Bonavia-redirect

of a bitch he is."

gab-8

I said, "Yes, I do."

Q Mr. Bonavia, you also testified, I believe, that with respect to a meeting that you had with Mr.Stoller, Mr. Allen and Mr. Feeney, there was mention of another case.

Yes.

- Q Not Training With the Pros?
- A No.
- Q What was the other case?

 MR. GOULD: Objection.
- Q Where Mr. D'Onofrio's name was brought up?

 THE COURT: I don't understand the significance of getting into this, particularly on redirect. I am going to sustain that.

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2	Q When did you first retain Dr. Stucki to get your
3	records, Mr. Bonavia?
1	MR. GOULD: I object to that.

THE COURT: I don't agree with that. Go ahead.

- Q When did you first retain Dr. Stucki?
- A March 13, the day before I got the records.
- Q When you got the records, Mr. Bonavia, from Bank Hofmann what did you do with them?

A I took them right to Dr. Stucki's office two blocks away.

- Q Did you review them with Dr. Stucki?
- A Yes, we sat for two hours looking through them.
- Q When did you next see those records?
- A When they were sent to me here because he filed the lawsuit.
 - Q I didn't hear you.
- A He filed the lawsuit and wanted the records. Could
 I explain this a little?
 - Q No, just tell us when you next saw the records.
 - A I saw duplicates of the records.
- Q Did you come into the U.S. Attorney's office in the fall of 1973 pursuant to that subpoena and show the U.S. Attorney duplicates of certain records?
 - A Yes, I did.

1	qb-2	Bonavia-redirect
2	Q	When did you get all your records from Dr. Stucki?
3	A	I got them about three weeks before
4	Q	Before what, sir?
5	A	That I brought them here. My accountant had been
6	working on	preparing an amended return. He had it three-
7	fourths con	mpleted.
8		MR. GOULD: Is this responsive to the question?
9		THE COURT: I am not sure that it is.
10		The question, I believe, is: When did you get
11	all of you	r records, is that it, Mr. Sorkin?
12		MR. SORKIN: That is correct, your Honor.
13	Q	When did you get all your records?
14	A	About three weeks before I brought them to New
15	York.	
16	Q	Do you recall when you brought all your records
17	to New Yor	k?
18	A	The first subpoena I don't know, I believe
19	October '7	3.
20	Q	When did you leave your records in New York, all
21	youur recor	ds, do you recall?
22	A	October '73, I think.
23	Q	The \$15,000 Chief Consolidated Mines, Mr. Bonavia
24	mentioned	in Frank's Exhibit M, how did you first learn about
25	that stock	.?

qb-3

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Bonavia-redirect

MR. GOULD: I object to that, your Honor. That doesn't open the door to another matter.

MR. SORKIN: It was brought up as collateral.

THE WITNESS: Was that --

THE COURT: Just a moment, Mr. Bonavia, please.

Y our question about Chief Consolidated is what?

MR. SORKIN: The question I put to him is how did he first learn of Chief Consolidated.

THE COURT: I will let you get into Chief Consolidated, but how did you first hear of it, that could have been anything.

MR. GOULD: If your Honor please, he wasn't asked a single question about Chief Consolidated.

THE COURT: I will use my own recollection and notes on that subject and I will agree with you, however, it wasn't gone into by you or Mr. Feldshuh extensively, but an appropriate question tightly frame I will permit. Now frame it.

Q Did someone recommend the purchase of Chief Consolidated Mines to you?

MR. GOULD: That is objected to as to its form.

Q Did you purchase Chief Consolidated Mining at some point in time?

A Yes, sir.

Let me show you Stoller Exhibit Z. You identified

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that as your writing "Barbin 4318"?

- A Yes, sir, that is my handwriting.
- Q Did you type out to "Dear Fred" and the following lines on top?
 - A No, sir.

MR. GOULD: This was asked and answered this morning.

MR. SORKIN: I don't think it was gone into and this is important.

THE COURT: I am sure I recall that he stated on several occasions that he didn't type this and that he knew nothing about it, isn't that so, Mr. Bonavia?

THE WITNESS: Yes, sir.

- Q Did you sign, during your relationship or while you were talking with Mr.Stoller and Mr. Allen, did you sign blank sheets of paper with the name Barbin and 4318 at their instructions?
 - A Yes, I did at various times.
 - Q Did you do it in Switzerland as well?
 - A Yes.

MR. SORKIN: No further questions.

MR. GOULD: I have more questions.

THE COURT: You want more questions?

MR. GOULD: Yes.

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RECROSS-EXAMINATION

BY MR. GOULD:

Q Do you remember signing sheets of paper with the name Barbin and the number in the middle of the page?

A Sir, I can remember signing where there were triplicates, two small sheets on the top, and I would sign the bottom sheet. I afterward thought I should have looked at the bottom sheet. There maybe wasn't anything on it.

The only thing typewritten was the sheet on the top.

Q I want to know if you signed anything in the middle of the page that you remember.

A Yes, you have one there I signed right in the middle of the page.

Q And there was nothing above it when you signed it, is that it?

A I don't remember there was, no. I think there were three sheets of paper clipped on top of another, shorter sheets, and I signed the bottom sheet.

Q So you now remember that there were three sheets of paper clipped together in blank?

- A That was many times that I did that.
- Q And you say this is one of them?
- A I am sure it was.
- Q You are sure that when you signed this paper

1	qb-7 Bonavia-recross
2	the typewriting wasn't in there, is that what you are telling
3	us?
4	A Yes, sir, there were two clipped sheets of paper
5	on top of it.
6	Q You didn't remember that this morning, did you?
7	MR. SORKIN: I don't think he asked him this
8	morning.
9	THE COURT: Gentlemen, let's not wrangle about this.
10	The jury fortunately is going to decide this and neither you
11	nor the Judge is. These comments are unutilitarian to
12	put it politely.
13	Q Mr. Bonavia, during the recess did you look at this
14	paper, Exhibit L? Did somebody show it to you?
15	A No, sir, I didn't see anything.
16	Q You didn't talk to anybody during the recess?
17	A No, sir.
18	Q With respect to your SEC testimony in 1967 when
19	you were asked about that yesterday, do you remember that is
20	when you said you told some lies, do you recall that?
21	A Yes, sir.
22	Q When you were asked about that yesterday tell
23	us again what it was you were afraid of that made you tell
24	those falsehoods?
25	A Mr.Stoller told me that L.J. Forget had secret

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accounts in the Bahamas and that Mr. Allen and Mr.Stoller had secret accounts in the Bahamas and they were having trouble with the secret accounts in the Bahamas and if I said anything they were going to cause me problems through that and it would cause problems for them and that Irving Cott owned a controlling interest of L.J. Forget and he would get me. He had called that morning and he said, "You know Irving Cott threatened you before."

- Q That is what you said yesterday?
- A I said to that effect.
- Q YOu did? Did you mention the name L.J. Forget yesterday?
 - A You didn't ask me.
- Q When I asked you what it was that Mr.Stoller threatened you with yesterday, did you mention the name L.J. Forget?
 - A No, but I said my life was threatened.
- Q Did you tell us anything about Mr. Cott or L.J. Forget yesterday?
 - A I wasn't asked.
- Q You were not asked anything about your reasons yesterday for testifying falsely before the SEC?
- A When I said my life was threatened and I started making more comments I was told to shut up, you would ask

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Yes. A

in 1969?

Yes.

Any other times he threatened you with violence? Q

And you had been threatened with violence by him

With the Pros?

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A If I caused any trouble with Training With the Pros, he said he would. He said if I cooperated with him he would get my money back with Training With the Pros if he had to put it back in himself.

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he had to put it back in himself.

Q Didn't you have a conversation with him some time,
with him or Allen or either of them, in which they said they
would guarantee the Barbin account against loss in Training

A No, sir, I never heard from the bank or them.

Stoller and Allen told me at least six months after that they had guaranteed the Barbin account. I said, "You got the money, you put it back." I don't know anything about it and I did not know about it until Stoller and Allen told me they guaranteed the Barbin account.

- Q When did they tell you that?
- A It was after they guaranteed it several months.
- Q When was that? What year?
- A I don't know.
- Q Can't you tell us what year it was?
- A I don't know when they guaranteed it. I have no knowledge of it.
 - Q When did they tell you they guaranteed it?
 - A It was probably within the same year.
 - Q Same year as what?

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1	qb-11 Bonavia-recross 1813
2	λ I would say 1970. I am guessing.
3	Q You have no recollection of when it was?
4	A We are talking about a lot of years, from 1959
5	through 1974. I can't remember each particular year.
6	MR. GOULD: No more questions.
7	MR. FELDSHUH: No questions, your Honor.
8	THE COURT: Any re-redirect?
9	MR. SORKIN: No, your Honor.
10	THE COURT: Thank you, Mr. Bonavia.
11	We will call the roll once again just to make
12	sure. You are sure now, gentlemen?
13	MR. FELDSHUH: No questions, your Honor.
14	MR. GOULD: I have nothing.
15	THE COURT: Very good.
16	THE COURT: Mr. Bonavia, while they are in tha
17	mood you better be excused.
18	Thank you.
19	(Witness excused.)
20	THE COURT: Mr. Sorkin.
21	MR. SORKIN: The Covernment calls William Brie
22	your Honor.
23	THE COURT: All right.
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WILLIAM

B R I E F, called as a witness by

the Government, having beenfirst duly sworn, was

examined and testified as follows:

MR.SORKIN: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. SORKIN:

Q Mr. Brief, where do you reside?

A 1091 Fordham Lane, Woodmere.

Q What do you do for a living?

A I am a broker and real estate and insurance.

Q Do you know a man by the name of Philip Stoller?

A Yes.

Q Do you see him in the courtroom today?

A Yes.

Q How long have you known Mr.Stoller?

MR. GOULD: If you want the record to reflect

that he identifies the defendant Stoller, I concede that.

Q How long have you known Mr.Stoller?

A Over 12 years.

Q Are you a neighbor of his?

A Yes.

Q Let me direct your attention, Mr. Brief, to January

of 1969. Did you have a conversation with Mr. Stoller

where a company called Training With the Pros came up in the conversation?

- A Yes.
- 0 Where was the conversation?

A It could have been in my home or his home. At some type of social, we saw each other frequently.

Q Tell us, please, what he said to you and what you said to him, sir.

A It was a general conversation. We would discuss stocks and bonds. We saw each other very frequently during the week.

Q Tell us what he said about Training With the Pros.

A He just suggested it as being a new issue that would be coming out.

Q Go ahead. Anything else that you can recall?

A And I asked him what it was about and he told me more or less what the firm was going to be doing or had been doing as far as an educational process of teaching other firms, employees of other firms what they would be eventually doing, expeditiously.

Q Let me direct your attention to the next time you had a conversation with Mr.Stoller about Training With the Pros.

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MR. GOULD: Are we to understand that the conversation is exhausted at this point?

Q Was there anything else that he said, Mr.Brief, at that first conversation about Training With the Pros?

A I couldn't remember specifically the first. There have been so many conversations. We saw each other at least five times a week. We would see each other almost every evening.

Q Do you recall any further conversation about Training With the Pros?

- A One time he had mentioned --
- Q At that first time, Mr.Brief.
- A I don't recall at the first time.
- Q Did there come a time when you spoke to him again about Training With the Pros?
 - A Yes.
 - Q When was that, sir?
 - A At another later date.
- Q Approximately when in relation to your first meeting?

A It would have to have been some time between the latter part of January or the early part of February.

Q What did he say to you and what did you say to him and where were you when you had the conversation?

state. We were either in his house or my house or it

could have been at another friend's home. The only state-

ments that he made, he had suggested or mentioned the stock

anyway and I asked him whether or not I would be able to

get some of the stock if he knew and he mentioned the name

and I said I would take a flyer on it and he said, "Don't

worry about it, if you get the stock, I will gladly purchase

Where we were specifically I can't possibly

He said it was a good issue, in his opinion,

I said, "Fine, let me see if I can get \$1100."

Did he say how much he would purchase the 1000

At the specific time I think it was mentioned.

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Per share? Q Yes. Did there come a time when you did send a check for 1100 shares, \$7700, by mail to Training With the Pros?

I don't recall if a price was mentioned. Eventually

Yes.

it was mentioned 8-1/4.

of the place for me to call.

shares from you, at what price?

up to 1000 shares."

Let me show you now, Mr.Brief, what has previously been marked as Government Exhibit 50 for identifica-

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

	1	qb-16 Brief-direct 1818
	2	tion. I ask you, please, if you can identify that?
	3	A Yes, it is my check.
	4	Q Is that your signature?
	5	A Yes.
	6	Q Who is the check made out to?
	7	A The Irving Trust Company, escrow agent.
	8	Q Was it mailed?
	9	A Yes.
	10	MR. SORKIN: I offer 50 in evidence.
	11	MR. GOULD: I have no objection.
xxx	12	(Government Exhibit 50 was received in evidence.)
	13	Q Did there come a time, Mr.Brief, when you did
	14	receive your certificate in the mail?
	15	A Yes.
	16	Q Do you recall when that was?
	17	A Some time in February.
	18	MR. GOULD: In the interest of saving time,
	19	there is no issue. The man bought 1100 shares. He undoubtedly
	20	sold them to Stoller or somebody for 8-1/4. He kept 100
	21	shares. He sold them at a different profit, I suppose,
	22	later on. I don't know why we need checks, certificates,
	23	documentation on this.
	24	MR. SORKIN: If Mr. Gould would look at the
erito	25	overt acts in the indictment

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MR. GOULD: I am ready to concede it.

I think as long as the defense is THE COURT: willing to concede, Mr. Sorkin, that is as good as spending the time.

MR. SORKIN: Very good.

THE COURT: In fact, I thought this was one of the subjects which Mr. Alenstein, Mr. Gould's partner and your office were treating last Friday.

MR. SORKIN: There is a little bit more, your Honor.

MR. GOULD: I have conceded right along. You remember we had the receipts marked.

MR. SORKIN: We have some people they will stiput late to, but Mr.Feldshuh won't. I can't decide for them.

THE COURT: I am not blaming you. I can understand that problem. I am just expressing my surprise because apparently now even Mr. Feldshuh will agree.

Your Honor, based on a continuing MR. FELDSHUH: objection which I think has long since been in the record --

THE COURT: If you are objecting to that on the grounds of that basis, no, I will receive it. But you don't object to the authenticity --

MR. FELDSHUH: Not at all.

THE COURT: Perhaps, Mr. Sorkin, you can guide

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1	qb-18 Brief-direct 1820
2	yourself accordingly.
3	MR. SORKÎN: Yes, I will.
4	Q Did there come a time when he paid you \$8250?
5	A Yes.
6	Q Did you deposit that in your bank?
7	A Yes.
8	Q Let me show you now
9	THE COURT: Mr. Sorkin, you baffle me a little.
10	I thought we were going to agree on some stipulation.
11	MR. SORKIN: I am moving on to this, your Honor.
12	THE COURT: You asked, "did he pay you," I
13	don't know who "he" is.
14	MR. SORKIN: Did Mr.Stoller
15	THE COURT: We have been talking with the lawyers
16	We didn't say Mr. Stoller.
17	MR. SORKIN: If I can go back and do it in
18	order and not worry about the stipulation, I can get it quicke
19	Q Did there come a time when you received your
20	certificate in the mail?
21	A Yes.
22	Ω Did you turn that certificate over to Mr.Stoller?
23	A When I received it in the mail I put it in the
24	bank.
25	Q Did you turn it over to Mr.Stoller?

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1	qb-19	Brief-direct 1821	
2	A	When I sold it to him.	
3	Q	Did Mr.Stolelr give you anything?	
4	A	He gave me a check. He paid for it.	
5	Q	For how much?	
6	A	\$8250.	
7	Q	Let me show you what has previously been	
8	marked as G	overnment Exhibit 30. Do you recall seeing th	nat
9	Mr.Brief?		
10	А	Yes.	
11	Q	Is that your signature on the bottom?	
12	A	Yes.	
13	Q	When did Mr.Stoller give you the check for \$82	250
14	A	On or about the 27th of February.	
15	Q	1969?	
16	А	Yes.	
17	Q	When did you sign that document, Government	
18	Exhibit 30?		
19	А	Probably either when I got paid or shortly the	ere
20	after.		. *
21	Q	Did you recall signing it when you got paid?	
22	A	I don't recall exactty one way or the other.	
23	Q	Did you have a conversation with Mr.Stoller	
24	before you	signed that document?	
25	A	Yes.	

1	qb-20	Brief-direct 1822
2	Q	What did he say to you and what did you say
3	to him?	
4	, А	He said it was just a matter of normalcy as
5	far as show	ing the sale of the shares.
6	Q	The sale of the shares to him?
7	A	The sale of the shares to him, which is who I
8	sold it to.	
9	Q	Did you prepare that document?
10	A	No.
11	Q	Do you know who did?
12	Α .	I don't know who prepared it.
13	Q	Did he have it in that form when he showed it
14	to you?	
15	A	To the best of my recollection, this is five and
16	a half year	s ago, I would say yes.
17	Q	Do you know a gentlemen by the name of Ramon
18	D'Onofrio?	
19	A	I don't know him. I met him once and I could
20	not identif	y him if he were in the courtroom.
21	Q	Where did you meet him?
22	A	I met him at a party.
23	Q	At a party. At whose house?
24	А	Mr.Stoller's house.
25	Q	When?

1	qb-21	Brief-direct 1823
2	A	It was in the summer I am not sure what
3	year it was	. It may have been '65, maybe '66, maybe '67.
4	Q	You don't recall?
5	A	I don't recall. It was in the summer, but I am
6	not certain	exactly as to what year.
7	Q	Do you know a gentleman by the name of
8	Jerome Alle	n?
9	A	Yes.
10	Q	Did you ever meet him?
11	A	Yes.
12	Q	When?
13	A	Many years ago. I am not certain as to the exac
14	year. It c	ould have been anytime from '64
15	Q	Who introduced you to him?
16	A	Mr.Stoller.
17	Q	Was he at this party also?
18	A	To the best of my recollection, yes.
19	Q	What about a gentleman by the name of Martin
20	Frank, do you know him?	
21	A	Yes.
22	Q	Was he also at this party?
23	A	Yes, I met him at this party also. It was a
24	large gathe	ring.
25	· ·	MR.SORKIN: No further questions.
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MR. GOULD: I move to strike out all that last about meeting the people at the party. I thought he was getting to something in the case.

MR. SORKIN: May I be heard?

THE COURT: No. I am going to deny that motion.
What is this Government Exhibit 30?

MR. SORKIN: That is one of the receipts. That came in by stipulation.

MR.GOULD: Should we let the jury into our confidence on this, your Honor?

THE COURT: That is up to Mr. Sorkin and you, not me. I am not presenting the evidence.

MR. SORKIN: Ladies and gentlemen of the jury, Number 30 is the receipt, if I may say, that Mr. D'Onofrio identified.

No further questions.

MR. GOULD: I have a few questions of this gentlemen.

CROSS-EXAMINATION

BY MR. GOULD:

Q Do I understand you to saythat you are a close friend of Mr.Stoller and have been for a number of years?

A Yes.

And that you often discuss securities with him?

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A Yes.

Q And that some time in the early part of 1969 in the course of one of your discussions he mentioned this company called Training With the Pros, correct?

A Yes.

Q And then you asked him if he thought you could get some of the stock?

A Yes.

Q He didn't press you on it, did he?

A No.

Q He didn't say, "I want you to buy some"?

A No.

Q It was your idea to get it and not his?

A Yes.

Q You know what a prospectus is, sir?

A Yes.

O You know what an offering circular is and Regulation A?

A I don't know about the regulations, but I know what the circulars are. I don't know the numbers.

Q You got a copy of the offering circular to
Training With the Pros, didn't you?

A Yes.

Q You received it in the mail with your stock or

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is speculative but that he would recommend it?

Yes, those words.

1	qb-25	Brief-cross 1827	
2	Ö	Those were the words?	
3	A	Yes.	
4	Q	And then, did he tell you anything about the	
5	earnings or	prospects of the company?	
6	A	The prospectus had next to nothing insofar as	
7	earnings.	It was strictly a matter of an idea that could be	
8	sold to var	ious other corporations on an educational theory.	
9	Q	So we have it, sir, you made a point and a quarter	r
10	on the 1000	shares that you bought and resold to Mr. Stoller	
11	correct?		
12	A	Yes, and I paid taxes on it.	
13	Q	Of course. Then you had an extra 100 shares	
14	that you picked up from the company that you didn't sell to		
15	Stoller, right?		
16	A	Right.	
17	Q	And you sold that later on at some profit?	
18	A	Right. About a month or six weeks later.	
19	•	MR. GOULD: Nothing further.	
20	CROSS-EXAMINATION		
21	BY MR. FELDSHUH:		
22	Q	Mr.Brief, the first time you met Mr.Frank was	
23	at this so-	called party?	
24	A	I am not certain. I think it was.	
25	٥	Do you have any recollection of ever discussing	

contact with, and he told me it was 11 or 12.

1	qb-27	Brief-redirect 1829
2	Q	You are not sure?
3	A	I am not sure.
4	RECROSS-EXA	MINATION
5	BY MR. GOUL	D:
6	Q	Stoller didn't tell you anything about the marke
7	price, did	he?
8	А	No, I didn't call Stoller. He wasn't my broker.
9	Q	When you sold it to him at a point and a quarter
10	markup, you	knew that the pink sheets had it at 11 or 12?
11	A	Yes.
12	Q	Nobody fooled you about that?
13	A	No.
14	Q	Nevertheless you sold it to Mr.Stoller at a
15	point and a	quarter higher?
16	A	Yes.
17	Q	That was your own act, nobody forced you to
18	do it?	
19	A	I wasn't forced into anything.
20	,	MR. SORKIN: A point and a quarter than what?
21		MR. GOULD: Than the offering price.
22	А	Right.
23	Q	Nobody forced you to do it?
24	A	No.
25	Q	Nobody threatened you in any way?

A No.

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RE-REDIRECT EXAMINATION

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BY MR. SORKIN:

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Q Which broker did you call, do you remember?

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A I think it was Merrill Lynch.

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MR. SORKIN: No further questions.

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THE COURT: Mr. Feldshuh?

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MR. FELDSHUH: Nothing else.

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THE COURT: You may be excused, Mr.Brief.

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(Witness excused.)

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MR. SORKIN: The Government calls Alan Rashes.

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LAN RASHES, called as a witness by the Govern

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ment, having been first duly sworn, was examined

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and testified as follows:

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MR. SORKIN: May I proceed, your Honor?

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THE COURT: Yes.

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MR. FELDSHUH: Your Honor, before this witness

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testifies we have made a request of Mr. Sorkin to deliver

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to us certain material that we believe to be 3500 material

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in connection with this testimony. We have not received

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the material and we believe, your Honor, that we are entitled

to it.

MR. SORKIN: This is the first time I am learning they thought it was 3500, What they asked for is the SEC

file.

THE COURT: Let me suggest this. It is a good time for the afternoon recess. Let's not hold up the jury during this.

Mrs. DeBartolo and ladies and gentlemen, we will take a ten-minute recess at this point.

(Jury left the courtroom.)

THE COURT: Gentlemen, you claim that you have got something that the Court has to rule about. Would you mind telling the Court what it is about?

MR. FELDSHUH: We have subpoended the SEC seeking to get the due diligence file concerning Training With the Pros. That subpoend was responded to, I believe, by the SEC producing the file and turning it over to Mr. Sorkin and not to us. We have had an opportunity this morning through Mr. Doonan to take a very hurried look at the file and we have observed in that hurried look many papers pertinent to this investigation, including those that Mr.Rashes signed.

THE COURT: Fine, but that doesn't necessarily make it 3500 material. I believe this witness is a former or perhaps he still is a lawyer working for the Commission, isn't he?

MR. FELDSHUH: I believe he is.

THE COURT: Just because he happens to sign a document in the course of his official duties doesn't make it 3500 material here. I don't know what he is going to say.

MR. FELDSHUH: I appreciate that but it is a document which the Government will concede refers to Training With the Pros and it is a signed paper by this witness.

THE COURT: I agree with you. I will take that on faith from you, but it doesn't make it 3500 material.

MR. FELDSHUH: Let's say it is material in response to our subpoena.

not on your case. We are on the Government's case. I sympathize with you. If you want to call the man as your witness, you may.

MR. FELDSHUH: I can use it for cross or any other purpose that I deem relevant in this trial.

THE COURT: Wait a minute. I don't know what you did, Mr.Feldshuh, but you asked me for a ruling on 3500 material.

MR. FELDSHUH: I withdraw that.

THE COURT: If you subpoenaed somebody that is your business. I don't see how I can field that. I never

hear about any subpoena problem. The Government has a witness. They want to call him and they are entitled to call him. You are entitled to subpoena him too.

MR. FELDSHUH: We have done so.

THE COURT: Don't ask me to take care of your problems when the Government's case is on.

MR. FELDSHUH: One point, your Honor, the paper that we subpoensed is in the possession of the United States Attorney now in response to that subpoens, and I ask that this Court direct the United States Attorney to turn that paper over to us.

MR. SORKIN: We never got a subpoena. We don't know what he is talking about.

THE COURT: This is another episode of Alice's garden of which we have many in this splendid trial.

Let's go back.

I dn't see how you would know. He says he subpoenaed the SEC and I don't know anything about that and you apparently don't know.

MR. SORKIN: I don't know.

THE COURT: Sorry, Mr.Feldshuh, I can't answer problems that are not my doing and I don't know anything about. I realize we live in a system where the Judge is practically a fiduciary relationship for any branch in the

street around here and I don't like to play that game and you are not a wretch in the street.

MR. FELDSHUH: You recall during the earlier testimony we made reference to the due diligence file --

THE COURT: A due diligent file I am sure existed but that doesn't mean I have to have it here for you now.

Of course there was a due diligence file. I don't doubt that.

MR. FELDSHUH: I say it is and I can't get access
to it for the very reason -- suppose I were to bring the
SEC in here, your Honor, and go into the question of enforceability of the subpoena.

what I am trying to tell you? It is the Government's case. You never told me that you wanted me to sit as a Judge to determine the enforceability of the subpoena and I don't pretend to do it now. I am a trial Judge at the moment.

MR. FELDSHUH: I am trying to circumvent all this nonsense and get down to looking at papers we subpoenaed.

THE COURT: Mr. Sorkin claims that he never knew that you sent the subpoena. What am I going to do about that?

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MR. GOULD: Your Honor, I think we are really getting ourselves caught up in something.

THE COURT: I agree with that.

MR. GOULD: I think they did subpoena the SEC file in this case.

THE COURT: Fine.

MR. GOULD: I think Mr. Sorkin has the file. Instead of the SEC delivering it to Feldshuh they gave it to Mr. Sorkin which is not so terrible. That is all right. As far as I am concerned, I don't want to get into this fight, but since they put this witness on the stand I anticipate that we may want to refer to the file in connection with his cross-examination. I therefore ask simply for Mr. Sorkin to acknowledge to the Court that the file is here and at an appropriate time we will ask for its production or such parts of it that can be produced and your Honor can rule on it then as to whether it is appropriate or not. Why can't we leave it that way? If he tells us he has the file here, that is all I am interested in.

THE COURT: It seems to me that is sensible, but to tell me it is 3500 material, I won't buy that.

MR. FELDSHUH: I withdraw that.

THE COURT: You are asking me to do something that is impossible.

MR. GOULD: Can we just get an acknowledgement from Mr. Sorkin --

THE COURT: He just held it up and acknowledged.

MR. SORKIN: Your Honor, I have the file.

MR. GOULD: We don't have to say anything else.

He has it. If we have any right for any part of it we will apply to your Honor at that time for its production.

THE COURT: I would certainly go along with that, Mr.Feldshuh. My irritation at you is that you are asking me to do something that no human being could do.

You are also asking me to construe something that I have no basis to construe.

I just can't.

Why don't we relax? It is a good thing that four o'clock is fast upon us. This has not been one of our better days.

MR. SORKIN: I am going to keep on the witness for five minutes. Problem I have is that Rashes is observing the holiday and he wants to get out. The other fellow we have as a witness has to be in Maine next Monday.

MR. GOULD: Call the other fellow first.

MR. SORKIN: I will call the other guy and we will save Rashes.

He is going to leave. If we get through with

1 qb-35 1837 2 this guy at twenty to 4:00, Rashes is gone. 3 THE COURT: Mr. Sorkin, you weren't even on this globe when this holiday was designated. Why do 4 5 you worry about this? 6 MR. SORKIN: We will call the other guy, your 7 Honor. 8 THE COURT: We debate more problems that we have 9 no control over. 10 MR. FELDSHUH: I thought I was very good, today, 11 short, right to the point. 12 THE COURT: You were miles ahead of most of us, 13 I will tell you that. 14 MR. FELDSHUH: Yes, sir. That was because of the 15 oncoming holiday, your Honor. 16 THE COURT: Why don't you tellMr. Rashes to go. 17 If the great man is nervous, don't let's discommode him. 18 He is probably so important we don't want to do that. 19 (Recess.) 20 End 2A 21 22 23 25

2b pm jqrf 1

(In open court, jury not present.)

THE COURT: Gentlemen, the jury is about to enter.

MR. GOULD: We are conscientiously trying to save the time of the Court and the Jury.

THE COURT: I know that, but the jury wouldn't understand that from the tone of your voice.

MR. GOULD: We will desist in that effort.

(In open court, jury present.)

THE COURT: Ladies and gentlemen of the jury, while you were out of the room the lawyers have agreed that they are going to withdraw the witness who just came in briefly, Mr. Rashes, I think his name was. Instead they are going to take another witness who apparently comes from out of town for quite a ways and will be very brief.

Mr. Sorkin.

MR. FLANNERY: The Government calls Santo Recca.

S A N T O R E C C A, called by the Government,

being first duly sworn, testified as follows:

MR. FLANNERY: May I proceed, your Honor?

THE COURT: Yes, sir.

	1039
1	jqrf 2 Recca-direct
2	DIRECT EXAMINATION
3	BY MR. FLANNERY:
4	Q Mr. Recca, are you employed?
5	A Yes, I am.
6	Q Where are you employed?
7	A I beg your pardon?
8	Q Where are you employed?
9	A General Corrugated Machine.
10	Q Do you know Ramon D'Onofrio?
11	A Yes, I do.
12	Q How long have you known him?
13	A About 12 years.
14	Q Did there come a time when you had a conversation
15	with Mr. D'Onofrio about Training With The Pros?
16	A Yes, there was.
17	Q When was that?
18	A Around January 1969.
19	Q Where was that?
20	A At Mr. D'Onofrio's home.
21	Q Was anyone else present?
22	A Yes, Mr. D'Onofrio's children and his wife.
23	Q To the best of your recollection, could you tell
24	me what you said and what he said?
25	A He told me he had this new issue coming out,

1	jqrf 3 Recca-direct
2	Training With The Pros.
3	Q Could you speak up?
4	A He h d this new issue coming out, Training With
5	The Pros. He explained to me what it would do with the
6	truining program and the manual and he asked me if I would
7	be interested in investing money in it. I said to the
8	extent I could, yes, I would be.
9	Q Did you say anything else in the conversation?
10	Did he say anything else?
11	A Pertaining to Training With The Pros?
12	Q Yes.
13	A Not at that time, no.
14	Q Did there come a time when you had another
15	conversation concerning Training With The Pros?
16	A Yes.
17	Ω When was that? How ong after this?
18	A After I received the prospectus in the mailing
19	for Training With The Pros.
20	Q What was said in that conversation both by
21	yourself and by him?
22	A At that time
23	Q When did you say the conversation was?
24	A After I received the prospectus. I would say
25	toward the end of January, beginning of February.

1	jgrf 4 Recca-direct
2	Q Could you say where you had this conversation?
3	About where was it? Was it in your home?
4	A No, it was probably either at his home or
5	out at skeet shooting. We used to go skeet shooting.
6	Q Skeet shooting?
7	A Yes, with a shotgun and clay pigeons.
8	Q What did you say in the conversation and what
9	did he say?
10	A At that time he said that he had the issue
11	Q Please keep your voice up.
12	A He asked if I got the prospectus and I said yes.
13	He said it would be coming out at \$7 a share, would
14	I be interested in going in with him at how much, and
15	I said the best I can go is \$700. That is \$100 shares.
16	He said, "Well, I will give you the money and
17	you buy 1,000 shares and when we sell it I will give you
18	back the 100 and whatever profit if any we make on it."
19	Q Was anything else said?
20	A Not really.
21	Q Was the stock bought in your name?
22	A No, it was bought in my wife's name.
23	Q Did there come a time when you received the
24	money from Mr. D'Onofrio?
25	A Yes, I received the check from Mr. D'Onofrio.

1	jqrf 5 Recca-direct
2	Q What did you do with that?
3	A I deposited it in my checking account and with-
4	drew a check I forget the name of the bank, a bank
5	in New York City and we sent it in with an application
6	for the stock.
7	Q Did you subsequently receive a receipt?
8	A Yes, I got the stock certificate.
9	Q Did you subsequently have a conversation with
10	Mr. D'Onofrio, a telephone conversation about the stock
11	certificate?
12	A Yes, he called me and said that he would send
13	me a document for my wife to sign and to send the document
14	with the stock certificate to him. And that he would
15	replace it with another certificate for 100 shares that
16	were mine and the 1,000 shares he would keep.
17	Q I show you Government's Exhibit 2-A already
18	introduced. Do you recognize this?
19	A Yes, this is the stock certificate.
20	Q Is that what you received in the mail?
21	A Yes, this is what I got in the mail.
22	Q What did you send back to Mr. D'Onofrio?
23	A I sent him this and the document on the back
24	signed by my wife but it was blank. There was nothing
25	written on it.

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1	jqrf 6 Recca-direct
2	Q I also show you Government's Exhibit 8 which
3	has been introduced, and I ask you if you recognize this?
4	A Yes.
5	Q Would you tell us what it is?
6	A It is a receipt for the stock we gave Ray.
7	Q When did you first see this document?
8	A At Mr. D'Onofrio's home.
9	Q Who was present?
10	A My wife
11	MR. GOULD: Do we really need all this? There
12	is no issue on this. The document is in evidence already.
13	If they have some point they want maybe we can concede
14	it.
15	THE COURT: Since I don't know what the point is
16	and since I am obviously not the prosecutor, I can't answer
17	you.
18	MR. FLANNERY: If the defense is willing to
19	stipulate that the document was signed subsequent to the
20	date on that document, then this isn't necessary.
21	MR. GOULD: How could I possibly? I haven't
22	the faintest idea.
23	MR. FLANNERY: That is why we are proceeding
24	with this line of questioning.
25	THE COURT: That is perfectly fair. If you want

1	jqrf 7	Recca-direct
2	to go ahe	ead, you may.
3	Q	I repeat my question.
4		I said where did you first see this document?
5	A	At Mr. D'Onofrio's home.
6	Q	When was that?
7	A	Somewhere early to mid-March.
8	Q	Who was present on that occasion when you
9	received	this document?
10	A	My wife was and she signed it.
11	Q	Who gave you the document?
12	• А	Mr. D'Onofrio.
13	Q	He gave it to you and not your wife?
14	A	He handed to like both of us.
15	Q	The signature on this document is Ruth Recca.
16	Do you re	ecognize that signature?
17	A	Yes.
18	Q	Is that the signature of your wife?
19	A	It is.
20	Q	And the date on this document is what?
21	A	February 21, 1969.
22	Q	Do you recall seeing that on the document the
23	đay it w	as signed?
24	. A	No, I do not.
25	Q	When you were given this document by Mr.

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1	jqrf 8 Recca-direct
2	D'Onofrio did he say amything to you when he gave you
3	this?
4	A He said he needed it as a receipt for the stock
5	that we gave back to him.
6	MR. FLANNERY: No further questions, your Honor.
7	MR. GOULD: I have no questions.
8	MR. FELDSHUH: I have no questions, your Honor.
9	My usual objection and I assume the same ruling.
10	THE COURT: Thank you, Mr. Recca, you may be
11	excused.
12	(Witness excused.)
13	MR. SORKIN: The Government calls Walter Paruch,
14	your Honor.
15	WALTER PARUCH, called as a witness
16	by the Government, being first duly sworn, testified
17	as follows:
18	MR. SORKIN: May I proceed, your Honor?
19	THE COURT: Yes.
20	DIRECT EXAMINATION
21	BY MR. SORKIN:
22	Q Mr. Paruch, are you employed?
23	A Yes, self-employed.
24	Q Where?
25	A New York Mercantile Exchange. I am a floor

1	jqrf 9	Paruch-direct
2	broker.	
3	Q	Mr. Paruch, were you ever a registered repre-
4	sentative	?
5	A	Yes.
6	Q	Do you know a person by the name of Eleanor
7	Wein?	
8	A	Yes, I do.
9	Q	When did you first meet Eleanor Wein?
10	A	At L. F. Rothschild & Company.
11	Q	Did there come a time when you became a partner
12	of Eleano	or Wein?
13	A	Yes.
14	Q	When was that, sir?
15	A	Around 1964.
16	Q	Where was that?
17	A	At Hirsch & Company.
18	Q	Could you tell us please what type of partner
19	you were?	
20	A	We shared accounts and commissions.
21	Q	Did you sit at the same desk together?
22	A	Side by side.
23	Q	Did you share phones?
24	A	We had cross phones, yes.
25	Q	Do you know a gentleman by the name of Philip

		1847
1	jqrf 10	Paruch-direct
2	Stoller?	
3	A	Yes, I do.
4	Q	Do you see him in the courtroom today?
5	A	Yes.
6		MR. SORKIN: May the record reflect that he has
7	identifie	d the Defendant Stoller.
8	Q	Mr. Paruch, when did you first meet Mr. Stoller?
9	A	I met him at Lieberbaum & Company.
10	Q	When was that, sir?
11	A	I w ald say in 1964.
12	Q	Were you employed
13	A	1965.
14	Q	Were you employed there?
15	A	Yes. I was there for a month or so.
16	Q	Was Mrs. Wein there as well?
17	A	Yes.
18	Q	Do you know a gentleman by the name of Jerome
19	Allen?	
20	A	Yes, I do.
21	Q	When did you first meet Mr. Allen?
22	A	At the same time I met Phil Stoller.
23	Q	Where was that?
24	A	Lieberbaum & Company.
25	Q	Were you and Mrs. Wein partners at Lieberbaum &

1 Paruch-direct jarf 11 2 Company? 3 Α No. Let'me direct your attention, Mr. Paruch, to 5 April of 1969. Did Eleanor Wein have a conversation 6 with a person while you were present? 7 Yes. After she got off the phone did she have a 9 conversation with you? 10 Yes, she did. 11 MR. SORKIN: Your Honor, at this point we represent 12 that we are going to call Eleanor Wein and this is a 13 conversation between Eleanor Wein and Walter Paruch outside 14 the presence of the defendants. 15 MR. GOULD: Then it is not admissible. 16 MR. SORKIN: We do have precedent in this case, 17 a conversation between Mr. D'Onofrio and Mr. Bonavia 18 outside the presence of Mr. D'Onofrio's testimony at it 19 was allowed. 20 THE COURT: Wait a minute. Speak for yourself. 21 I don't consider that any precedent binding on the Court. MR. SORKIN: I don't either. I wanted to point 23 it out. We are making that representation and Eleanor 24 Wein will be here. 25 THE COURT: The trouble is that it doesn't

1 jarf 12 Paruch-direct 2 have anything to do with the real problem at hand which 3 defense counsel is raising. It would cure the hearsay problem up to a point but it wouldn't be a total 5 cure. 6 MR. SORKIN: We would like to elicit this con-7 versation that he had with Eleanor Wein. 8 MR. GOULD: I object. 9 THE COURT: I think they are within their rights 10 to object. You are not contending these people are co-11 conspirators, are you? 12 MR. SORKIN: No, far from it. 13 THE COURT: Then I don't see on what theory 14 you can offer it. 15 Did you have a conversation with Eleanor Wein? 16 Yes. 17 After this conversation with Eleanor Wein did 18 you purchase stock of Training With The Pros? 19 Yes, I did. A 20 For whose account? 21 I bought 100 shares for my aunt. 22 Q What is your aunt's name? 23 Rose Hludzenske. 24 Does your aunt live with you? 25 Yes, she does.

1	jqrf 13 Paruch-direct
2	Q Did she receive a confirmation of purchase in the
3	mail?
4	A Yes, she did.
5	Q At your house?
6	A Right.
7	Q Will you please look at Government's Exhibit 73
8	and I ask you if that is the confirmation that your aunt
9	received?
10	A Yes.
11	Q Was this mailed from Hirsch & Company to your
12	home?
13	A Yes.
14	MR. GOULD: I object to this, your Honor.
15	This hasn't been connected with any defendant in this case.
16	THE COURT: I didn't suggest that it had, Mr.
17	Gould. I think we are dealing with quite a different
18	problem. We are dealing with something in the mails, I
19	would surmise.
20	MR. GOULD: Even then he can't testify to it.
21	THE COURT: Sure he can testify to it. Why
22	not? He says it was received in the mail.
23	MR. GOULD: Can I ask him about it?
24	THE COURT: If you feel you want to ask some
25	voir dire, you may.

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1	jqrf 14 Paruch-direct
2	VOIR DIRE EXAMINATION
3	BY MR. GOULD:
4	Q Did it come to you in the mail?
5	A It came to the house, my house.
6	Q She lives with you?
7	A Yes.
8	Q Did you see it when it came in?
9	A I am not home when the mail comes in. The mail
10	comes in at 9:00, 10:00 o'clock and I am at the office.
11	Q You didn't see it when it came in?
12	A No, afterwards.
13	Q All you know is that the paper was at your house
14	and you saw it at your house?
15	A Right.
16	MR. GOULD: I stand on the objection. That is
17	no way to prove the mailing.
18	THE COURT: I agree it doesn't prove the mailing
19	but he has identified it as an authentic document.
20	MR. GOULD: That was at his house.
21	THE COURT: Right. I will take it subject to
22	further connection.
23	BY MR. SORKIN:
24	Q Where is your aunt now?
25	A Maybe she is home. She left this morning

Maybe she is home. She left this morning --

jqrf 15 Paruch-direct

MR. SORKIN: Call the aunt.

THE COURT: Just a moment, gentlemen. First of all, Mr. Paruch has answered you. She is in the city somewhere.

THE WITNESS: She left this morning to go some place.

THE COURT: She will be back? Where do you live?
THE WITNESS: Oceanside, New York.

MR. GOULD: I don't want to cause any inconvenience to anybody. It is not worth fussing about. If the only purpose in calling this witness is to prove a receipt of confirmation by his aunt that is a different thing. I will be glad to stipulate that it was sent and received by her, I am sure, through the mail and I can't imagine Hirsch sending a horse and carriage out there with a confirmation. It must have been the mail.

If that is all we have it for let him go.

MR. SORKIN: We have a little more but I will accept what Mr. Gould has said.

THE COURT: All right.

MR. FELDSHUH: I will join in that stipulation.

(Government's Exhibit 73 received in evidence.)

MR. SORKIN: Ladies and gentlemen, since we are

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SOUTHER

THERN DISTRICT COURT REPORTERS, U.S. COURTHOUS

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1	jqrf 16 Paruch-direct		
2	still on the confirmation, the purchase date of this was		
3	4/14/1969, 100 shares of Training With The Pros at		
4	\$62 a share for Miss Rose Hludzenske, 175 Roosevelt Street,		
5	Oceanside, New York, with the Hirsch & Co., 25 Broad		
6	Street address on it.		
7	Q Did there come a time, Mr. Paruch, when you had		
8	a conversation with Philip Stoller and the subject of		
9	Training With The Pros came up in the conversation?		
10	A Yes.		
11	Q How soon after this purchase, sir?		
12	MR. GOULD: I object to that. Let him ask a		
13	time.		
14	THE COURT: You are asking the time, I don't		
15	follow you.		
16	MR. GOULD: How do we know it was after this		
17	purchase?		
18	THE COURT: I don't know but one thing at a		
19	time.		
20	MR. GOULD: It is an improper question. I		
21	don't want him to lead this man or do the testifying.		
22	THE COURT: To an extent it is leading, I agree		
23	with you, but frequently that is the case and I will allow		
24	it.		
25	Go ahead.		

jqrf 17 Paruch-direct
Q Did there come a time when you spoke to Mr.
Stoller about Training With The Pros subsequent to the
purchase on April 15, 1969?
A Yes, there was.
Q How soon after that?
A I think a couple of weeks, a few weeks.
_
Q Just confine yourself to Training With The Pros
in that telephone conversation.
What did you say to Mr. Stoller and what did Mr.
Stoller say to you and, by the way, did he call you or did
you call him?
A I think he called me.
Q What did you say to him, sir, and what did he
say to you?
A I asked him about Training With The Pros. The
price was down. He said to me, "This is not a deficit
company."
MR. GOULD: This is what?
THE WITNESS: "This is not a deficit company,"
meaning it wasn't losing money.
meaning it wasn't losing money. Q Go ahead.

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1	jqrf 18 Paruch-direct
2	one dollar to a dollar and a half next year," and the
3	earnings will go in a geometric progression.
4	Q Was there any mention of a child in that con-
5	versation with Mr. Stoller?
6	A Yes, Eleanor asked me to ask him if he would
7	buy it for a child and he said yes.
8	Q What did you say to Mr. Stoller after Mrs.
9	Wein said, "Ask him if he would buy it for a child"?
10	A What did I say to him?
11	Q Yes.
12	A I don't remember what I said to him.
13	Q I didn't hear you.
14	A I didn't understand your question.
15	Q You were on the phone with Mr. Stoller.
16	A Yes, he said he would buy it.
17	Q Listen to my question. You were on the phone
18	with Mr. Stoller. Does Mrs. Wein say something to you,
19	yes or no?
20	A No, I don't think she said anything to me.
21	Q Did she ask you to ask him something?
22	A She asked him if he would buy it for a child.
23	That was the question.
24	Q Did you them ask Mr. Stoller if he would buy
	II

it for a child?

	1350	- 1
1	jqrf 19 Paruch-direct	
2	A I did.	
3	Q What did he say to you?	
4	A He said yes, he would buy it for a child.	
5	Q Did there come a time when you purchased addition	nal
6	shares of Training With The Pros?	
7	A Right. I bought 50 shares for my wife's aunt	
8	at \$50 a share.	
9	Q Who was that?	
10	A Sally Turner.	
11	Q Where does Sally Turner live?	
12	A Painesville, Kentucky.	
13	Q Do you remember when you purchased the stock	
14	for her?	
15	A I think I bought it the same day that I bought	
16	50 shares for my aunt, another 50 shares. I think it was	
17	around the 23rd of May.	
18	Q Let me show you now what has previously been	
19	marked as Government's Exhibit 73-A and I ask you again,	
20	did you see that at your aunt's house or your house when	
21	you lived together?	
22	A Yes, I received that in my house, yes.	
23	MR. SORKIN: We ask for the same stipulation	
24	with respect to 73-A and also that a confirmation was	
25	mailed to Mrs. Sally Turner in Painesville, Kentucky	
- 1	II	- 4

1 jqrf 20 Paruch-direct from Hirsch & Company. 3 MR. GOULD: I so stipulate. MR. FELDSHUH: With the usual caution, your 5 Honor. 6 MR. GOULD: Without conceding that it has any-7 thing to do with the Defendant Stoller in any way. 8 THE COURT: I understand. 9 You are going to offer these confirmations? 10 MR. SORKIN: I am just offering 73-A which is 11 the second Rose Hludzenske. I am not offering the con-12 firmation for Sally Turner. 13 THE COURT: 73-A? 14 MR. SORKIN: Yes. 15 (Government's Exhibit 73-A received in 16 evidence.) 17 MR. GOULD: May I inquire under what count of the indictment all of this is supposed to be coming in? 18 19 THE COURT: I tell you, Mr. Gould, take a look 20 at Count 6 or 73-A. As for Sally Turner, although he 21 is not offering that confirmation at this point, I suggest you look at Count 5. 23 MR. GOULD: Very well, your Honor. 24 MR. SORKIN: I take it, your Honor, the 25 stipulation is that a confirmation was mailed from Hirsch

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1	jqrf 21 Paruch-direct
2	& Company to Sally Turner in Painesville, Kentucky?
3	MR. GOULD: I am sure it was. I have no reason
4	to contest it.
5	MR. FELDSHUH: Likewise.
6	THE COURT: Any other questions of Mr. Paruch?
7	MR. SORKIN: One last question.
8	Q Do you know a gentleman by the name of Ramon
9	D'Onofrio?
10	A I don't know him personally but we had his
11	commodity account. He did one transaction with us.
12	Q Who is we?
13	A Eleanor Wein and I.
14	Q Did Mr. D'Onofrio open his account with you and
15	Mrs. Wein?
16	A Yes.
17	Q Who introduced Mr. D'Onofrio to you and Mrs.
18	Wein?
19	A Philip Stoller.
20	MR. SORKIN: No further questions.
21	CROSS EXAMINATION
22	BY MR. GOULD:
23	Q Mr. Paruch, you have been in the securities
24	business a long time, haven't you?
25	A Yes, I am in business

jqrf 22 Paruch-cross 1 MR. GOULD: I am going to withdraw my question. 2 MR. SORKIN: Your Honor, it is right at 4:00 and 3 Mr. Paruch will be here on Monday morning. I think it is a good time to break before his cross. 5 THE COURT: If there is not going to be 6 extensive cross maybe the jury would just as soon wait 7 8 a minute or two. 9 MR. SORKIN: I don't know. MR. GOULD: Five minutes, ten minutes, I would 10 think at most. I will try to be very brief. 11 THE COURT: Is that all right with you 12 gentlemen? 13 14 Mr. Paruch, you have been in the securities business a long time. 15 16 Yes. You know that on these new issues, and you knew 17 the Training With The Pros was a new issue, didn't you? 18 A No. 19 You didn't know that? 20 I didn't. A 21 You bought the security without knowing anything 22 about it? 23 That is right. A 24 Is that a regular practice of yours? Q

1	jqrf 23	Paruch-cross
2	A	No.
3	Q	Why did you do it in this case?
4	A	Well, I had received some stocks from Jerry
5	and PHil	and they were winners. They were good stocks.
6	Q	You mean Mr. Stoller and Mr. Allen?
7	A	Yes. He said it is a winner and I took it for
8	granted.	I don't know. I investigated after, you know.
9) 2	So you had had suggestions about securities
10	from the	m before this Training With The Pros, right?
11	A	Yes.
12	Q	And they had been pretty accurate, hadn't they?
13	A	Yes.
14	Q	And you made money with them?
15	A	Yes.
16	Q	And you had confidence in them?
17	A	Yes.
18	Q	You knew them well and you knew their reputation?
19	А	I knew they knew stocks.
20	Q	You knew that they were skilled professionals
21	in the s	securities field, isn't that right?
22	A	I guess you can say that.
23	Q	You knew that they were honest, didn't you?
24	A	Yes.
25	Q	They never told you any lies, had they?

1	jąrf	24	Paruch-cross
2		A	Not as far as I know.
3		Q	Then you heard through Mrs. Wein or somebody
4	that	they	had an interest in Training With The Pros and
5	you	just	went ahead and bought it?
6		Α	Yes.
7		Q	Because you knew they were interested in it,
8	right	t?	
9		Α	Right.
10		Ω	As a matter of fact, the stock did go up,
11	didn	't it	, after you bought it?
12		A	If it did I didn't know about it.
13		Q	You didn't pay any attention to it?
14		Α	No.
15			MR. GOULD: I have no more questions.
16			MR. FELDSHUH: I have no questions, your Honor.
17	REDLI	RECT 1	EXAMINATION
18	BY MI	R. SO	RKIN:
19		Q	Mr. Gould asked you if you made money with
20	Jerry	, and	Phil before, did you make money on Training With
21	The I	Pros?	
22		A	No.
ಚ		Q	How much did your aunt lose?
24			MR. GOULD: I object to that. What difference
25	does	it ma	ake? I can tell you how much I lost.

1 jgrf 25 Paruch-redirect 2 MR. SORKIN: You didn't buy Training With The 3 Pros. MR. GOULD: How do you know? 5 THE COURT: I don't think we have to go into that 6 but if you want to ask him how much he lost if he 7 recalls --How much did your customers lose? 9 10,000 --10 MR. GOULD: Objection. 11 THE COURT: I agree with defense counsel. That 12 is too much. We don't need that. 13 Thank you, Mr. Paruch, you may be excused. 14 (Witness excused.) 15 THE COURT: Miss DeBartola and ladies and 16 gentlemen, I won't keep you. However, we will resume, 17 of course, on Monday, as you know. I would like to try 18 again 9:30 and see if we can't do better. Let me just tell 19 you what I know from counsel tell me as to how we are 20 progressing. I believe it is fair to say that the 21 Government should finish its proof sometime on Tuesday. 22 St least that is the expectation and from what I know it 23 seems eminently reasonable. That gives you some idea of

I will see you next Monday at 9:30.

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of where we are going. I hope you have a pleasant weekend.

jqrf 26

(Jury left courtroom.)

THE COURT: Mr. Feldshuh, I would like to suggest an aberrant thought even in 1974, and that is that the SEC files are, I believe, certainly here and public documents which would include you and me and maybe a few other characters. Seriously, what I am trying to say is that I would ask -- and I sympathize with Mr. Sorkin. I don't think he was at all remiss in not turning this over because he had no reason to anticipate I assume any more than I did.

I would also agree with him that probably a lot of this is not, strictly speaking, 3500 material. But if you want to see the due diligence file I don't see how the Government can't show it to you, particularly if you subpoenaed it.

Do you see any reason, Mr. Sorkin?

MR. SORKIN: The only thing I would oppose would be, of course, internal memoranda in the non-public file.

As far as the due diligence file --

THE COURT: I am not even sure Mr. Feldshuh wants the non-public file.

MR. FELDSHUH: I just want to see what you are going to show me.

MR. SORKIN: This is a record of action and it

1 jqrf 27 2 is in the record section and I am turing it over to Mr. 3 Feldshuh right now. MR. GOULD: A due diligence file is a public 5 file and anybody can see it. 6 THE COURT: Particularly in 1974. I thought 7 we were coming off this national hangup that everything 8 belongs to some bureaucrat. 9 MR. GOULD: The other stuff on the investigative 10 file, the internal file, if I may respectfully direct your Monor's attention to what my own experience has been --11 12 THE COURT: I am not saying he should turn that 13 over. 14 MR. GOULD: I don't think he should turn that 15 over to us. 16 THE COURT: I am talking about the due diligence 17 file and any other public file portions which I thought 18 everybody knew about anyhow. MR. SORKIN: That is it, your Honor. The only 19 other files we have are the investigative file which was 20 non-public, the AlO-2 file which are memos in the file. 21 MR. FELDSHUH: Let me see them. 23 MR. GOULD: That is public. 24 MR. SORKIN: The AlO-2 file --

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MR. GOULD: If it is not marked it is a public

jqrf 28

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file.

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MR. SORKIN: There are things here that I disagree with. There are closing reports written by SEC attorneys to their supervisors which are non-public. There are memos from supervisors to Kevin Duffy, internal memos. I don't see how that is related.

MR. GOULD: What I think should be done with that is if in the course of examining Mr. Rashes we think there is something there relevant we turn it over to the Court and the Court can decide if there is a basis for confidentiality.

MR. FELDSHUH: The Securities and Exchange Commission marked it a public file.

THE COURT: This has been a bad day and you have done much better than Messrs. Gould, Sorkin and Tyler have done and you are getting down to as bad as we have been all day. You just better simmer down here. You look at that file you have been given. This man Rashes, I haven't the faintest notice of what that great man is going to be asked on direct. I am going to support Mr. Sorkin until I hear something different.

I have a feeling you are going to have more than what you can cope with in your hands right now. If something comes up and you have a specific need for

jqrf 29 it I will gladly entertain an application after we know what 2 Rashes is going to tell us. But I am not going to support any general rummage at this point because I think it will 4 . 5 just prolong the trial and make life more miserable 6 than it already is. 7 MR. FELDSHUH: I am willing to look at this 8 Friday and save the Court time. 9 THE COURT: I hope you do. We have quite a few 10 days, you better. MR. FELDSHUH: Yes, sir. 11 12 THE COURT: All right. 13 Have a good holiday. 14 (Trial adjourned to September 30, 1974 at 15 9:30 a.m.) $\mathbf{x}\mathbf{x}$ 16 17 18 19 20 21 22 23 25

Recross

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In

in the New York Regional Office.

there instead.

Yes, I was.

as to the Defendant Stoller at this point and I will give

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you a chance to be heard at the recess. I don't see any evidentiary basis now to have this kind of thing received as to the other defendant and I remind you that my understanding of the conspiracy count is in my mind as I make that statement.

MR. SORKIN: I understand, your Honor.

MR. GOULD: In that case, I assume your Honor will explain to the jury that it is being received only on the false statement counts.

THE COURT: I assume the Government is offering it also as to the state of mind of the defendant with regard to Count 1, but I think maybe you raise a good point. I will receive it only as to the so-called false statement counts at this point.

(Government's Exhibit 105 for identification received in evidence.)

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Q Was this memo prepared on or about the time that you spoke to Mr. Stoller?

A According to the memo, it was prepared two days thereafter.

Q You testify that this was your memo?

A Yes.

Q Was this memo placed in the Commision's files after you prepared it?

A Yes.

Q Was it in the ordinary course of the Commission's business to keep memos of conversations?

A Yes, it is.

Q Was this memo kept in the ordinary course of the business?

A Yes.

O Of the SEC?

A Yes.

MR. SORKIN: We offer 67A in evidence, your Honor.

MR. FELDSHUH: Same objection as to the defendant

Frank.

MR. GOULD: I have no objection to its receipt on the false statement counts.

THE COURT: Right. It will be received in respect to those counts only as to the defendant Stoller only.

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rmb-3

Rashes-direct

(Government Exhibit 67A for identification was received in evidence.)

MR. GOULD: Excuse me a moment, your Honor. Let me confer with Mr. Sorkin for a moment.

(Counsel confer off the record.)

Q Mr.Rashes, let me show you what we will now mark as 67B.

(Government Exhibit 67B was marked for identification.)

Q Would you look at 67B and I ask you if that is an exact copy of 67A, with certain portions deleted.

MR. GOULD: Why can't we save a little time, your Honor? I will consent that 67A be withdrawn and that 67B as shown to the witness now be received in evidence.

I think that is the best way to do it and we don't have to fool around with it.

MR. SORKIN: May I read 67B to the jury, your Honor?

THE COURT: Before we get into that, I am not sure the record accurately reflects the goings on here. Originally you offered 67A.

MR. SORKIN: We withdraw that, your Honor, and offer now 67B.

XXX

MR. GOULD: To which we consent --

THE COURT: Under the false statement count only.

MR. FELDSHUH: As to which I request your Honor to make the same ruling.

THE COURT: I did, Mr. Feldshuh. The jury understands that. It is received only as to Stoller under the false statement counts.

You have no concern, sir.

(Government Exhibit 67B for identification was received in evidence.)

MR. SORKIN: Your Honor, may I hand up the copy of this for your Honor to read while I am reading it to see if your Honor wishes to maintain the position on the false statements counts only?

Ladies and gentlemen of the jury, this is dated
August 31, 1969 --

MR. GOULD: Before counsel reads this to the jury, may I respectfully suggest this is anAugust 21st memorandum and we have two other documents which have been received which antedate this. Am I to understand counsel is not going to communicate their contents to the jury?

Wouldn't it be more orderly to start at the beginning?

THE COURT: You may be right, but under our system counsel tries the case rather than the Judge, and I

1	rmb-5 Rashes-direct
2	have to tolerate whatever he is up to.
3	Let me ask you something, Mr.
4	only one other document that I know of a
5	Exhibit 105.
6	MR. SORKIN: That is correct,
.7	THE COURT: What do you want
8	I have it here.
9	MR. SORKIN: It is quite leng
10	I don't want to take the Court's time an
11	THE COURT: You want to read
12	MR. SORKIN: Yes, your Honor,
13	exact copy of 67A in your possession.
14	(Mr. Sorkin reads to jury fro
15	Exhibit 67B in evidence.)
16	
17	
18	
19	• ,
20	
21	
22	
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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23

s up to. thing, Mr. Sorkin. There is know of and that is Government s correct, your Honor. you want to do with that? quite lengthy, your Honor, and 's time and read it now. nt to read 67B now? our Honor, which is an ession. o jury from Government

MR. SORKIN: I have no further questions, your Honor.

I think, Mr. Gould, that I am persuaded that the ruling was a little narrow.

I am going to change my ruling and receive 67B not only in respect to the so-called false statement counts, but as to the other counts having to do with the alleged fraud, conspiracy, et cetera, and so instruct you and the jury in case it makes any difference on your cross-examination.

MR. GOULD: In those circumstances, your Honor, fromwhat I know of Government Exhibit 105, that probably the ruling would have to be consistent thereto because the same subjects are covered.

I can't conscientiously represent to you that there is any difference in content between the two documents.

THE COURT: I haven't had a chance to study that.

Why don't you assume that that might be the case in your cross-examination if you care to.

As I explained to Mr. Sorkin, as soon as I get a chance to read that transcript, which I am trying to do as quickly as I can, I will then make a ruling on that if need be.

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Certainly I have read Government Exhibit 67B, and I think the Government is right on that. That should be admitted as to the defendant Stoller only, and I will allow the jury to consider it in respect to any counts that they care to.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7:4580

gwrf 2b am Rashes 1 MR. GOULD: I would like to make another suggestion, 2 your Honor. 3 Here is this transcript which runs about 38 pages and it really seems to me to be silly to try to cross examine him on the transcript with the jury not knowing a word that 6 is in it. It is in evidence. 7 If Mr. Sorkin is not going to read it, I will read it. 9 MR. SORKIN: I will be happy to read it. I didn't 10 want to take the Court's time. 11 MR. GOULD: How can I cross examine about 12 something that they don't know anything about? 13 MR. SORKIN: I will read it now, your Honor. 14 MR. GOULD: If he doesn't want to read it, I will 15 be glad to. 16 THE COURT: Mr. Sorkin said he will read it. 17 Why don't you save yourself. 18 MR. GOULD: I'm grateful. 19 THE COURT: As a matter of fact, would you like to 20 use one of your partners, Mr. Sorkin, so that we could 21 proceed a pace with two voices instead of just your one? 22 MR. SORKIN: I think I can read fairly well just one, 23 your Honor. 24 THE COURT: I don't quarrel with that, I'm just 25

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1	gwrf 2 Pashes
2	making a suggestion.
3	MR.SORKIN: I have to take 105-A, your Honor.
_* 4	THE COURT: You don't have copies of this?
5	MR. SORKIN: I do for Mr. Gould. I did not
6	make one for the Court.
7	MR. GOULD: I can give this to his Honor.
8	THE COURT: Take this, please. You keep it.
9	You need it more than I do.
10	MR. GOULD: You are going to read questions and
11	answers?
12	MR. SORKIN: That is correct.
13	MR. GOULD: If you want, Mr. Stoller will be
14	glad to read the response.
15	MR. SORKIN: He has done it once already.
16	MR. GOULD: I know
17	THE COURT: All right, gentlemen. Let's go along.
18	May I suggest there is some preliminary material
19	there that you may not care to read, either one of you?
20	MR. SORKIN: That is correct, your Honor.
21	THE COURT: All right.
22	(Pause.)
23	MR. GOULD: Mr. Sorkin, may I suggest to you that
24	you start at page 6 where the word "examination" appears.
25	MR. SORKIN: Fine.
	(Mr. Sorkin read from Government's Exhibit 105.)

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24 25 Yes, sir. In other words, when a stock goes from as low

SEC looks into it as a routine matter?

Yes, sir. A

Am I not correct, sir, that in the year 1969 in which this activity went on, you had a special interest in what were then hot issues?

MR. SORKIN: That's all, your Honor, and I have no further questions for the witness.

THE COURT: Mr. Gould.

CROSS EXAMINATION

BY MR. GOULD:

At the time that you conducted this examination, Mr. Rashes, of Mr. Stoller, together with Messrs. Todd and Keller of the SEC, what was your job in the SEC?

I was an enforcement attorney.

And you were conducting this as part of an Q investigation on what you thought was some kind of questionable activity, is that right?

Yes, sir.

And the fact is, sir, that the question activity which brought the matter to the attention of the enforcement arm of the SEC was the rise in stock from February to July?

as \$7 on an issue price to some 60 odd dollars a share, the

1	rmrf 2 Rashes-cross 1882
2	A I didn't have any special interest
3	Q I mean the Commission staff.
4	A Yes.
5	Q By hot issues, we and you and the public meant issues
6	which increased very substantially in price from the time
7	that they became public?
8	A Yes, sir.
9	Q And you wanted to be sure, did you not, that the
10	increase in price was related to some kind of reasonable,
11	normal demand for the stock?
12	A Yes, sir.
13	Q That was your purpose, correct?
14	A Yes.
15	Q And it was with that purpose in mind in the
16	summer, late spring of 1969 that you examined into Training
17	With The Pros?
18	A Yes, sir.
19	Ω And it was with that purpose in mind that you
20	examined witnesses, like Stoller and others, you got
21	papers, and took a look at it?
22	A Yes, sir.
23	Q Am I not right, sir, that during that period,
24	in the first half of 1969, there were many such issues?
25	A I believe there were, sir.

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Q And it was happening with a number of securities where there was no evidence of any manipulation?

A Yes, sir.

MR. SORKIN: Objection, your Honor. How would he know if there was any evidence as to --

MR. GOULD: Well, he answered.

THE COURT: It is a little late. The answer is already out.

Q Your enforcement branch, Mr. Pollack and Mr. Sporkin, were talking with the enforcement people every day about that subject?

A Yes, sir.

Q And they were urging you to look into these things very, very carefully?

A They didn't urge me directly, but whenever we open an investigation we try to look into it very carefully.

Q You looked into a number of them in that period -I don't mean you personally, but I mean your agents?

A Yes.

Q And you knew that?

A Yes.

Q As a matter of fact, didn't you some time in late '68, early '68 set up kind of a special unit over in the SEC to look into these things?

Rashes-cross

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THE COURT: There is no objection to any of this, but he set up -- you didn't set up a special unit? THE WITNESS: No.

MR. GOULD: I mean the Securities and Exchange Commission.

THE COURT: This is not cross-examination, you are making this man your own witness. We didn't go into I don't know why the lawyer fo r the Government doesn't object, but --

MR. GOULD: Well, I think I am going pretty far afield.

- You were in charge of this investigation into Training With the Pros?
 - I conducted it, Mr. Gould.
- And the next time you saw Mr. Stoller after you conducted this question and answer, which is contained in Government Exhibit 105, which Mr. Sor. in has just read, was in August?
 - Yes.
- And that is the one as to which you made a contemporaneous memorandum, or nearly contemporaneous memorandum, Government Exhibit 6B?
 - Yes, sir.

End 3B

Rashes-cross

Q You didn't subpoena Stoller to come in in August, did you?

A I believe we did.

Q He did come in, you say, pursuant to the subpoena?

A I believe so.

Q Is it not the fact that you served a subpoena on him when he came into the office and not in advance?

A My recollection is, Mr. Gould, we had told him we were going to serve him with a subpoena and he came in and we gave him the subpoena at that time.

Q After he came in? He came in voluntarily then --

A I believe he was aware he was going to be served with the subpoena when he came in.

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Q And then you had a talk -- he said he wanted to talk off the record, correct? .

A Yes, sir.

Q But you made a record of it?

A Well, Mr. Gould, as far as I know, we never have off the record conversations. A record, as far as my understanding, it is a formalistic recorder with a reporter and question and answers. Whenever we have a conversation, we make a memorandum of that conversation.

Q After the examination of Stoller in August did you continue the investigation into Training With the Pros?

A I believe we did.

Q Was it ever concluded?

A Yes, it was.

Q Was any action taken by the Commission?

A The only action that I was privy to tak was a Regulation A suspension hearing of the Regulation A offering.

Q Was any formal action taken on that?

A That was settled and the Regulation A -- the

Regulation A exemption of Training With the Pros was permanent
ly suspended.

Q But Stoller was not a party to that?

A No, he was not.

Q Nor was Mr.Frank a party to it?

1	gab-2	Rashes-cross 1888
2	A	Mr.Frank represented the company, but he is not a
3	party.	
4	Q	Do you remember when that was done?
5	A	I believe it was the following year, 1970, but
6	I don't ha	ve a recollection of the date.
7	Q	As far as you know, no other action was taken by
8	the Securi	ties and Exchange Commission after that?
9	A	As far as I know.
10	Q	As far as you know, you did not refer it to the
11	Department	of Justice, did you?
12	A	No, I did not.
13	Q	By "you" here I mean the Securities and Exchange
14	Commission	•
15	A	I have no information about that, no knowledge.
16	Q	One thing more. In the cross of your examination
17	of Mr.Stol	ler, the one that is reflected in Government
18	Exhibit 10	5, there is some reference to the use of nominees.
19		Do you recall that?
20	. A	Yes, sir.
21	Q	You have conducted a number of investigations
22	into these	so-called rapid increase in new issues, have yout
23	not?	t.

A Yes.

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Have you not found that it is characteristic of

June 20.

MR. SORKIN:

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Q --June 20,1969.

I believe so.

Do you recall in the course of that testimony you read to Mr. Stoller a certain letter of indication, that Bank Hofmann had -- wherein Bank Hofmann had indicated an interest in purchasing certain shares?

> I heard it in the testimony this morning. MR. FELDSHUH: Could I have Government Exhibit 4? (Pause.)

Sir, I ask you to look at Government Exhibit 4 in evidence and tell me, sir --

MR. FELDSHUH: Will you concede, Mr. Sorkin, this is the letter that Mr.Rashes read to Mr.Stoller on June 20, 1969?

MR. SORKIN: Your Honor, I think I have already conceded -- yes. I think I have already conceded that the Commission obtained this letter from Mr. Moss on May 27.

Mr.Rashes, in connection with the investigation Q of Training With the Pros, wasn't it the usual and regular course of business of the SEC to conduct a due diligence meeting prior to the issue coming out?

I believe it was.

It was.

With regard to Training With the Pros and keeping

in mind that the effective date of that issue was February

3, 1969, it is the fact that the due diligence meeting preceded
the effective date, isn't that so?

A Well, I was not privy to the due diligence conference.

Q I am sorry?

A I was not privy to the due diligence conference.

I had nothing to do with the actual processing or comments
on a Regular A offering. The normal course of events is
the due diligence conference does precede the effective date.

Q I see. It is the regular course of business of the SEC in connection with its investigation to make transcripts of the testimony given by the particular witness?

A Yes, it is.

Q Is that right, sir?

A Yes, it is.

Q I show you this official transcript of the proceedings and I ask you, sir, do you recognize that document?

A Yes, I do.

Q What is it, sir?

A It is a transcript of questions and answers of Mr. Moss taken in New York on May 27, 1969.

Q Will you look at it further, sir, and tell me:
Were you present upon that occasion?

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Yes, I was.

MR. FELDSHUH: I would like to have this marked.

MR. SORKIN: We will stipulate, your Honor, that that is an accurate copy of the testimony that Mr. Moss gave on May 27, 1969.

MR. FELDSHUH: I will offer it, sir.

MR. SORKIN: However, we are objecting to the relevancy at this time.

THE COURT: I tell you what: What you are really saying is, and I would have thought you would have raised this earlier, this isn't cross-examination at all. This is using Mr. Rashes as the defendant Frank's witness.

MR. FELDSHUH: That is right, sir.

THE COURT: If you want to offer this at the time when your case is on, Mr.Feldshuh, fine, but not now. The Government will be in no position to quarrel about the competency or the legitimacy, if I may say, of that as a written document.

MR. FELDSHUH: May I just have it marked for identification then.

THE COURT: Surely.

MR. FELDSHUH: Thank you, sir.

MR. GOULD: And the offer is withdrawn at this time.

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Rashes-cross

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THE COURT: I would think so. We are not trying anybody's case except the United States case now. We will get to the other cases if need be later.

(Defendant Frank Exhibit N was marked for identification.)

THE COURT: Can we agree that we can excuse this witness?

MR. FELDSHUH: Your Honor, may I go to the side bar for a moment?

THE COURT: You don't have to come to the side

MR. FELDSHUH: I will have to call this witness back again.

THE COURT: As long as we have started this road and if you want to use him further as your witness, fine.

I want to know: Do you have anything else?

MR. FELDSHUH: Just one thing.

THE COURT: Good.

MR. FELDSHEEL: Then I will be finished with him.

THE COURT: Go ahead.

Q In the course of your duties at the SEC, Mr.
Rashes, you do make records of telephone conversations, do
you not?

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A Yes, I do.

Q Did there come a time, Mr. Rashes, in May of 1969, when you had a conversation with Mr.Frank?

A I had many conversations with Mr.Frank during that time.

Q I am talking about Training With the Pros.

A I had many conversations with Mr.Frank with Training With the Pros.

MR. FELDSHUH: May I see the file of the SEC, please, that you have in your possession?

MR. SORKIN: What file?

MR. FELDSHUH: I am talking about the SEC file with respect to its investigation of Training With the Pros.

MR. SORKIN: For the reasons we went over last week,
I don't know --

THE COURT: If I may say so, the reasons I just dilated on.

Gentlemen, there are ways and means of trying a lawsuit. This is not the way for one good reason. There are
a lot of files of the SEC that these gentlemen have, Mr.
Feldshuh.

I sympathize with the Government. They don't have to produce a file in a moment's notice, not knowing

1	gwrf am 4b Rashes-cross	
2	O Do you know when for the first time Mr. Frank	
3	was retained to represent TWP in connection with your	
4	investigation? Do you know that?	
5	A I don't have a clear recollection. I know it	
6	was after Mr. Moss testified, after the exhibit you just	
7	had marked for identification.	
8	O I see.	
9	You know Mr. Moss testified on May 27, 1969?	
10	A The date on the transcript you showed me.	
11	Q Do I understand you to say it was right after	
12	that, sir?	
13	A Sometime after that. I don't know whether it vas	
14	a day after, a week after, a month after, but after	
15	that transcript.	
16	Q All right.	
17	MR. SORKIN: Your Honor, I have one question on	
18	redirect if I may.	
19	REDIRECT EXAMINATION	
20	BY MR. SORKIN:	
21	Q Mr. Rashes, Mr. Gould asked you if it was	
22	unusual to use nominees.	
23	Do you recall him asking you that?	
24	A Yes, I do.	
25	Q In your experience, is it unusual to use nominees	

to take stock down beneficially for yourself during a 2 Req. A underwriting and not list it on the subscriber's 3 list that you in fact owned that stock beneficially? Well --5 MR. GOULD: Just a minute. I object to the 6 7 question on its form first. THE COURT: I'm inclined to agree, Mr. Sorkin, 8 if for no other reason, there is nothing in the record 9 to show that whatever he knows, which was implicit in your 10 question. Maybe he knows something, maybe he doesn't. 11 12 I don't know. MR. SORKIN: I think Mr. Gould's question --13 14 THE COURT: No, I heard Mr. Gould's question, which was not your question. 15 Look, between you and Mr. Feldshuh we have now 16 floundered around here for ten or fifteen minutes. 17 I insist we stick to our knitting. If you want to put 18 a good question, put it. It wasn't that. 19 To your knowledge, at the time of the effective 20 date, February 4, 1969, did Mr. Stoller have a beneficial 21 22 interest in the 5,000 shares that were subscribed to by his 23 wife, his mother, his mother-in-law, Mr. Brief and Mr. Tolansky? 24 MR. GOULD: That is objected to as improper 25

Rashes-redirect

gwrf 2

gwrf 3 1 Rashes-redirect 2 redirect, calling for an answer that the witness couldn't give even if it were admissible. 3 THE COURT: I'm not sure I would put it that 5 starkly. The point is lurking in this objection, Mr. 6 Sorkin. We didn't go into this on direct. 7 MR. SORKIN: Mr. Gould raised it on cross, 8 your Honor. 9 THE COURT: He raised quite a different thing. 10 You don't seem to conceive what you are doing here. may well be that everything is as you say it is, but not this 11 witness. He did some investigating. He did some legal 12 work. 13 We suddenly don't come back on a pour through basis on redirect. 15 16 MR. SORKIN: I will withdraw the question, your 17 Honor. 18 THE COURT: You are certainly entitled to show whatever the facts may show, but not through this witness. 19 I take umbrage with you just as I did with Mr. Feldshuh. 20 Just because a man appears, we don't suddenly change him 21 22 into a different witness. 23 MR. SORKIN: No further questions, your Honor. 24 25 THE COURT: Before anybody changes their mind, sir, you better be excused.

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Thank you.

(Witness excused.)

THE COURT: Who is your next witness?

MR. SORKIN: Next witness, your Honor, is Nathan Hyman.

THE COURT: Before we call him, maybe this would be a good time to take the morning recess, ladies and gentlemen.

We will take a ten minute recess.

(Recess.)

(In open court, jury absent.)

THE COURT: Mr. Sorkin, you apparently have some theory that you think would support the admission of Mr. Stoller's remarks to the SEC as against Frank?

MR. SORKIN: I do, your Honor.

THE COURT: I don't know what you have on your mind. I guess you better speak. I offhand don't see any rational basis for that. Perhaps I'm overlooking something.

MR. SORKIN: Your Honor, our position with respect to Mr. Stoller's testimony, which was June 20, 1969, is that prior to June 20, 1969 there had been conversations between Mr. Frank, Mr. Stoller and Mr. D'Onofrio and, in fact, after Mr. Moss testified on May 27th, D'Onofrio and Frank said you got to get me to represent the company

gwrf 5

because we are all going to be in trouble, or words to that effect.

It is our position, your Honor, that Stoller's testimony at the Commission on June 20th was an attempt to cover up the conspiracy and conceal certain aspects of the conspiracy on behalf of himself and the other co-conspirators.

We treat that testimony at the SEC as we treat the conversations that took place subsequent to June 20th when Mr. Stoller came back and had a meeting in Mr. Frank's office with D'Onofrio and Mr. Allen and Mr. Frank said, "Did you testify"? And he said, "Yes."

"And you lied."

Did you tell him about this, and so forth. Going even further into '69, the conversations with Bonavia and so forth, all in an attempt to conceal the conspiracy here.

(Jury and witness not present.)

there are two troubles, really. Number one, the Government has accused Stoller in this regard separately. They have not accused Frank. That is what puzzles me. I could well understand you could have accused Frank of being involved in aiding and abetting some kind of obstruction of justice in the sense of conspiring to cause false testimony to be given to the Securities and Exchange Commission, but you didn't.

All you have done in this indictment is accuse Stoller. Now, the counts in the indictment relating to Frank make no allegations of coverup. I am aware the Government can do this, and I have participated in cases with this has happened and they have been convicted and affirmed on appeal and everything else, but that is not what is alleged in our indictment.

My theory has been, and still is, really, that you have accused Stoller. Fine. But you have not accused Frank as such.

MR. SORKIN: I would take the position, your Honor, that Mr. Stoller's testimony comes in as against him on the false statement counts, 11 through 16, and on the --

THE COURT: I agree with that. Also it goes
to Stoller's state of mind which I broadened the ruling
and changed my mind in your favor on that, but to charge
that to Frank, even with the conversations later -- I am
aware of what you are saying -- I think is a little bit much.

First of all, there is no real proof to the effect that Frank told Stoller what to say at the SEC.

Second of all, and this is the more serious problem, you have not really accused Frank of covering up. I don't know of any allegations in the indictment charging Frank with that kind of conduct.

Perhaps he did, I wouldn't know, but you have not accused him of it.

MR. SORKIN: What we did allege was one of the objects of the conspiracy and I think this came in with the subsequent '69 and '70 and '71 conversations between Bonavia and D'Onofrio that there was an attempt well into '69 when Bonavia visited Frank and had a conversation with him, "Don't testify, don't mention Training With The Pros, don't mention us. Take the Fifth Amendment," at which point Bonavia said he was not going to and then we had all that testimony.

It is our position that the conspirators here began as soon as the crank letter was received, and

Miss Herzfeld testified to that, as did Mr. D'Onofrio, and began to attempt to cover up the conspiracy. Indeed it is our position that the whole purpose of bringing Mr. Frank into this was to use his expertise, if you will, in securities law, so that D'Onofrio, Allen and Stoller would not get caught and cover up the conspiracy by using nominees whereas if they used the indication letter, they would get caught.

THE COURT: As I read Count 1 there is nothing in this to the effect that Frank did as you say. I agree, maybe he did, I don't know, but if you will look at the means paragraphs and as well if you will look at the objects of the conspiracy paragraph --

MR. SORKIN: I agree, your Honor, there is nothing in the indictment. However we filed a bill of particulars prior to trial in which we disclosed that an additional object of the conspiracy was an attempt to conceal the conspiracy.

of particulars to rewrite the indictment as such, but, even so, I have allowed that other testimony in to show perhaps, if you wish to argue it, guilty knowledge on the part of the participants in the scheme, but given the structure of this indictment, to suddenly say Frank is in

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effect accused of obstruction of justice in this effect causing Stoller to give false statements in the SEC --

MR. SORKIN: We are not alleging that he caused Stoller, we are alleging that prior to Stoller's testimony there was an understanding between the conspirators to conceal the conspiracy and one attempt to conceal the conspiracy was Stoller's false testimony at the SEC.

THE COURT: But I know nothing to connect Frank to that specific business. To me that seems to be totally misleading and if I gave Mr. Feldshuh a chance I suppose he would say what I am saying.

MR. FELDSHUH: I am saying exactly that, your Honor.

in, and I have, showing the state of mind of the alleged co-conspirators, because I understand your theory there to be in effect they continued the conspiracy even after Moss testified and also on the theory that it would show perhaps guilty knowledge and if you convince the jury that that is what this meant, fine; in other words, to prove criminal scienter in the usual sense, but to somehow make Frank a co-defendant with Stoller in respect to the latter's false statements to the SEC, if that is what they were, I don't see it.

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 So I am going to adhere to my ruling.

Am I right in thinking we are still hoping to finish this Government's case tomorrow?

MR. SORKIN: Your Honor, I am optimistic. I think we can finish maybe hopefully by lunchtime today.

THE COURT: Well, maybe not, but at least you have answered my question substantially.

MR. SORKIN: I must burden the Court with one other point and go back to the Frank tapes. After your Honor's ruling, our office read your Honor's ruling on the record and we have gone into much discussion. We are greatly disturbed about a number of things your Honor mentioned in the ruling and the ultimate result of your ruling to the effect --

THE COURT: This is the Frank what?

MR. SORKIN: The Frank tapes, your Honor, the

Massiah issue. We have attempted, with the manpower

we have available and with the time we have, to prepare limited
but additional papers on this issue --

MR. SORKIN: -- limited in scope, but new papers on this issue. We have prepared the papers, Mr. Flanner and I, and they are now in the possession of Mr.Edwards

who initially authorized Mr. Allen to go up there. He is reviewing them now and I just received a message we will

THE COURT: Again, your voice dropped.

be able to submit these papers to your Honor at four o'clock today.

The problem we have is that we may be resting -THE COURT: That is all right. As long as you
have alerted me, that is no problem.

MR. SORKIN: To that end we would like the opportunity to defer resting if we finish our direct case today.

THE COURT: Well, you can just rest subject to that. The point I would like to know and I assume what you are saying is that you have another brief?

MR. SORKIN: We have another brief and I can't answer whether there will be a subpporting affidavit, but I think there will be another brief on this very issue.

THE COURT: And you can't get that until four o'clock?

MR. SORKIN: I know others are working on it,
and I have just been told by one of the girls in the office
that it is either being typed or looked at again and it should

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Hyman-direct

be up -- maybe before 4:00, I don't know, your Honor. I will know better at lunchtime.

THE COURT: We will just wait and see that and you will have to give Messrs. Feldshuh and Gould a copy so they can be heard on whatever this additional thought or theory is and we will just have to thresh it out.

All right, we will bring the jury in now and go ahead with the witnesses.

MR. SORKIN: Your Honor, I think this is uncalled for on the part of Mr. Feldshuh's office. Mr.Derfner came up to me just now with the non-public file which I refused to turn over to them, and I don't know how he got it and I think it is wrong and I don't know how they got it.

THE OGURT: I don't know either, so we will have to take this up some time later.

(Jury present.)

NATHAN HYMAN, called as a witness by the

Government, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SORKIN:

Q Mr. Hyman, please keep your voice up. Are you presently employed?

A No. I retired two and a half years ago.

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14 years with
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A Yes.

Q Do you see Mr.Stoller in the couotroom today?

A Yes, sir, right there (indicating).

MR. GOULD: Concede the identification.

Q Let me direct your attention to approximately
April 15, 1969. Did you call Mr.Stoller on the telephone?

A I did.

Q Tell us, please, what you said to him and what he said to you?

A Before I go into that, I can say that as a broker in Wall Street we go to different sources for our information --

THE COURT: Just a moment, Mr. Hyman. The system works better if you answer the questions as counsel poses them.

Q The question was, what did you say to Mr.Stoller and what did Mr.Stoller say to you?

MR. FELDSHUH: Same objection, same ruling, your Honor?

THE COURT: I don't know what the same objection, same ruling means.

MR. FELDSHUH: Not binding on the defendant Frank.

THE COURT: I am going to take it subject to

connection as to everybody because I don't know what he is

said to you.

louder.

connection to your client.

Tell us what you said to Mr.Stoller and what he

MR. GOULD: I didn't hear the last, your Honor.

THE COURT: First we will have his answer read

Mr.Stoller says "Well, I have one here, Training

A I asked Mr.Stoller that particular day if he had

Can we get the witness to talk a little more slowly and

going to say, Mr. Feldshuh. I will take it subject to 2

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With the Pros."

(Answer read.)

Did he say anything else?

anything new about any particular stock --

back and then I will have a few words with him.

What did Mr.Stoller say?

Yes. He says, "It's a company that is supposed to train men to become mechanics, through a school," and he said McGraw Hill was behind it financially and I think you car make a lot of money in it."

- Did you ever hear the name Elmer Moss? Q
- He was president of the company. A
- Yes or no?
- Yes.

1	rmb-6	Hyman-direct
2	Q	Did that name come up in connection with Mr.
3	Stoller?	
4	A	A couple of times.
5	Q	What did he say?
6	. A	He told me the name of the president and the
7	secretary,	a Miss Hirschberg. He gave me the phone number
8	and I call	ed that particular office.
9	Q	After this conversation with Mr.Stoller, what
0	did you do	?
1	A	I contacted a couple of my customers.
2	Q	Who did you contact?
3	A	Michael Howard and Mrs. Frank, joint account by
4	the name o	f Mr.Frank.
5	, Q	Go ahead.
16	. A	The following morning I bought 200 shares at \$70.
17	Q	For whom?
18	. А	For Michael Howard and the Frank account, joint
19	account.	
20	. Q	What is the name of the Frank
21	A	Gisele Frank account.
22	Q	To your knowledge were confirmations of purchase
23	mailed to	Gisele Frank and Michael Howard?
24	A	Every one of them.

Did you receive a duplicate?

	1	rmb-7	Hyman-direct	1912
	2	A	Yes.	
	3	Q	At the time of the mailing?	
²¹ 3	4	A	Correct.	
	5	Q	What office were you with at that time?	1
	6	A	At duPont, 342 Madison Avenue.	
	7	Q	Let me direct your attention to approximate	ately May
	8	20, 1969,	did you then call Mr.Stoller?	
	9	A	Yes, sir.	
	10	Q	What did you say to him and what did he	say to you
ga ga	11	A ·	Af I bought these 200 shares?	
	. 12	Q	Yes, sir.	
	13	A	And the stock was already down?	
* .	14	. Q	The next conversation which you had with	Mr.
	15	Stoller.		
	16	A	The stock was down and I asked Mr.Stolle	r what
	17	happened t	to the stock.	
End 5B	18	,		
	19			
	20	٠.		
	21			
	22			
7	23			
	24	•		
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Tk 6A

1	gab-3	Hyman-cross
2	for a grea	t number of years before you retired a couple of
3	years ago,	right?
4	A	Yes.
5	Q	You acted mostly during your career as what we
6	call a cus	tomers man or registered representative?
7	A	Correct.
8	Q	It was part of your job to service the accounts
9	of individ	uals whom you knew?
10	A	Correct.
11	Q	And am I right, sir, that that consisted of trying
12	to find se	curities that you could conscientiously recommend
13	to them?	
14	A	Yes.
15	2	And, indeed, sir, when you recommended a security
16	to them yo	oudid it on the basis of the best information avail-
17	able?	
18	A	Correct.
19	Q	And the sources of information that you used
20	were, firs	st of all, conversations with people whom you knew
21	to be know	vledgeable in the securities field, correct?
22	A	Right, you are.
23	Q	'i you knew one of them you would call?
24	A	Correct.
5	0	And then there was certain literature available to

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	1916
1	gab-4 liyman-c cross
2	you which assisted you?
3	A Correct.
4	Q And when a company was one which had recently
5	gone public, there was available to you a prospectus or an
6	offcring circular, correct?
7	A No, that is not correct. I didn't get any of
8	the circulars until after I received information from the
9	company from Mr. Stoller.
10	Q Until when?
11	A After I called the secretary of the company.
12	Q I see.
13	A She went me some information.
14	Q hormal matter the firm of duPont gets copies
15	of prospectuses or did when it was in business?
16	A They are supposed to.
17	Q And they are available to you?
18	A Not that particular time which I told you. I
19	didn't receive any information until after I bought the stock
20	after Mr. Stoller told me about it.
21	Q But you did know, did you not, when you first
22	spoke to Mr. Stoller, that this was a relatively new issue?
23	A I didn't know it. He didn't say anything about
24	a new issue. He told me about the stock.

Didn't you inquire as to how long this had been

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call you?

Correct.

In other words, you initiated the discussion?

1	gab-6	Hyman-cross-
2	A	Right you are.
3	Q	
		And you initiated it because you wanted to know
4		knew anything that could be helpful to you?
5	A	Correct.
6	. Q	You had done that a number of times in the past?
7	A	Right you are.
8	Q	And as I understand your testimony a number of
9	times in t	he past he had made useful recommendations?
10	A	Right.
11	Q	So in effect you called him up, you said, "Phil,
12	do you kno	w anything that's good?" Right?
13	A	Right.
14	Q	And he mentioned Training With the Pros?
15	A	Correct.
16	Q	And then as I understand it he also gave you the
17	address of	a company, didn't he?
18	A	Yes, sir.
19	Q	In that first conversation?
20	, A	Yes, sir.
21	Q	And he gave you the name of the president?
22	A	Yes, sir.
23	Q	Mr. Moss?
24	A .	Yes, sir.
25	Q	And he gave you the name of another officer?

1	gab-7	Hyman-ccross 1919
2	A	Secretary.
3	Q	Seretary?
4	A	Yes.
5	Q	Mrs. Herzfeld?
6	. A	Yes, sir.
7	Ŏ	Did you call those people?
8	, A	I did.
9	Q	Did you discuss the company with them?
10	A	I asked
11		MR. SORKIN: I object to any hearsay, conversa-
12	tions betw	een Mr. Hyman
13		THE COURT: The question simply is whether or not
14	he asked a	bout the company. I will allow a yes or no answer
15	to that.	
16		Do you follow me, Mr. Hyman? As I understand it,
17	you called	both the lady, Mrs. Herzfeld,
18		THE WITNESS: I just spoke to the lady.
19		THE COURT: You just spoke to her?
20		THE WITNESS: Yes. Later on
21		THE COURT: These people can't hear you.
22		THE WITNESS: First I spoke to Mrs. Herzfeld,
23	the secre	tary.
24		THE COURT: Did you ever speak to Moss?
25		THE WITNESS: Yes, a couple of months later I

spoke to him.

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MR. FELDSHUH: Or connected.

THE COURT: Does the name Mrs. Gizella Frank --

THE COURT: I take it in both these conversations you asked something about the details of the company?

THE COURT: Next question.

THE WITNESS: Correct.

And then you placed orders for two customers, Mr.

Correct.

Howard and Mrs. Frank?

Q YOu felt --

THE COURT: Excuse me for interrupting. dentally, I think you mentioned both a Mr.and Mrs. Frank.

THE WITNESS: That is a joint account.

THE COURT: Right. What was Mr.Frank's name?

THE WITNESS: his name was -- I can't remember.

THE COURT: Was it Martin Frank?

THE WITNESS: Martin Frank, that's it.

MR. SORKIN: We are going to represent --

I think you should, in fairness to THE COURT: everybody concerned here, which it be conceded that this is not the Martin Frank who is a defendant in this case?

MR. SORKIN: In no way related, your Honor, as far as we know.

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THE WITNESS: Yes, that's the one.

THE COURT: Yen I gather your other client beside
Howard that you mentioned was Mike --

THE WITNESS: Michael Howard.

THE COURT: Nancy Dinan?

THE WITNESS: Yes.

THE COURT: And Grace Heckmann?

THE WITNESS: Correct.

THE COURT: Do you know whether or not confirmations or advices of these buys you made for them were sent to them and mailed?

THE WITNESS: Yes, confirmations always sent in the mail. I always get the duplicate.

THE COURT: All right.

You recall getting the duplicates in those cases?

THE WITNESS: I sent them the duplicates to make sure they have it for tax purposes.

THE COURT: All right. Forgive me, Mr. Gould.

- Q Sir, have you told us everything you can remember about your conversations with Mr.Stoller when you spoke to him on April 15?
 - A First time, that is all I can remember.
 - Q All right.
 - The following morning I bought 200 at 70, at the

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very, very high. I regret it to this day. The stock

opened up \$10 higher on 200 shares of stock. As a matter

of fact, if the over-the-counter broker called me and had

given me a quotation on the stock, I would have called these

I think it was outrageous what over-the-counter traders did, fantastic.

- Q The over-the counter traders did?
- A Yes.
- Q You mean theid biding it up?

two customers up and canceled the two orders.

- A Terrible, terrible.
- You didn't discuss that with Mr.Stoller?
- A Mr.Stoller had nothing to do with that.
- Q That is clear in your mind?
- A Yes.
- Q I just wanted to get something clear from you. When you talked to Mr.Stoller, did he emphasize in any way to you that the stock was a speculative issue?
 - A Yes, sir, he said it was a speculative stock.
- Q As a matter of fact, didn't he tell you that he thought it was a very good speculation and if it ever came into being, people could make a lot of money?
 - A Correct.
 - Q In other words, it was a speculative iffy situation?

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1	gab-11 Hyman-c: cross 1923
2	A May I say something here? Every stock you buy
3	is a speculation. That is my experience in Wall Street.
4	Q But this particular stock Mr.Stoller told you
5	was very speculative, didn't he?
6	A He said speculative.
7	. Q Let me ask you this. I am referring now to your
8	testimony before the grand jury, Page RSK5.
9	Were you asked this question and did you give
10	this answer:
11	"Q What did he tell you?" He referring to Stoller
12	then.
13	"A That this was a very good speculation and if it
14	ever hit, ever came into being, people could make a lot of
15	money out of it."
16	A Right.
17	Q Then about a month later, as I recall it, you had
18	another conversation with Mr.Stoller?
19	A I spoke to Mr.Stoller many times.
20	Q About Training With the Pros?
21	A I yes, I asked him why the stock
22	Q Excuse me. In that conversation again you
22	called him, right?

I always called him.

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And at that point you called him because the

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That could be. That could be all right.

When you purchased it at 70 and you called Mr. Stoller, didn't you discuss with him that "The night before Training With the Pros had sold around 55"?

Α Correct.

brokers were doing?

"And that when you bought the stock at 70 there had been gyrations in the over-the-counter house"?

That is the fault of the over-the-counter trader. If they had come back with a quotation that morning, I would have definitely canceled the two orders.

- Q Because you suspected that the over-the-counter
- A Something was wrong.
- There was something wrong in the trading? Q
- A Yes.
- Not something wrong in the company?
- No, sir, the over-the-counter traders on the Α floor.

And you felt that it was the fault of the overthe counter brokers?

Definitely.

You never bought the stock for your own I see. account, did you?

No, sir.

(Witness excused.)

1	6b am gwrf
2	MR. SORKIN: Your Honor, the Government calls
3	Elinor Wien.
4	ELINOR WIEN GOLDINHER,
5	called as a witness by the Government, being first
6	duly sworn, testified as follows:
7	MR. SORKIN: May I proceed, your Honor?
8	THE COURT: Yes, sir.
9	DIRECT EXAMINATION
10	BY MR. SORKIN:
11	Q It is Mrs. Goldinher, isn't it?
12	A That's right.
13	Q That is your married name?
14	A Right.
15	Q Are you presently employed, Mrs. Goldinher?
16	A No.
17	Q Do you know a gentleman by the name of Walter Paruch?
18	A Yes, sir.
19	Q Who is Mr. Paruch?
20	A Well, he was a registered representative at the
21	same time that I was and for a while we were partners.
22	Q At what brokerage firm?
23	A First at Lieberbaum and then at Hirsch & Company
24	and then at Sartorius & Company.
25	Ω During what period of time were you partners

	1	, 1520
1	gwrf 2	Goldinher-direct
2	with Mr.	Paruch?
3	A	From about 1964 to 1971.
4	Ŏ.	And your partners in what business?
5	A	In some of our accounts in the brokerage business.
6	2	You were a registered representative?
7	A	Right.
8	Q	When you say partners, you mean you split
9	commissi	ons?
10	А	Right, and serviced some accounts jointly.
11	Ú	Do you know a gentleman by the name of Jerome
12	Allen?	
13	A	Yes.
14	Ω	When did you first meet him?
15	A	When I started working at Lieberbaum in 1964.
16	Ò	Do you know a gentleman by the name of Philip
17	Stoller?	
18	A	Yes.
19	Q	When did you meet Mr. Stoller?
20	A	At the same time, 1964.
21	Q	Do you see Mr. Stoller in the courtroom today?
22	A	Yes.
23		MR. GOULD: I concede the identification.
24	Q	Let me direct your attention to April 15, 1969.
25		Did you have a conversation with either Mr.

	·
1	gwrf 3 Goldinher-direct
2	Stoller or Mr. Allen?
3	A Yes, with Mr. Allen.
4	Q Go ahead.
5	A. He had called on the phone and told me to purchase
6	a stock called Training With The Pros. He claimed that it
7	would be another EBM and he wanted me to be sure to get
8	some even if he had to lend me money to buy it.
9	Ω Did you say anything to him?
10	A About the stock?
11	Q Yes.
12	A I said I would see what I could do. I was meeting
13	him later that day. We had an appointment.
14	O After your conversation with him, did you have
15	a conversation with Mr. Paruch?
16	A Yes, I told him
17	Q Don't tell us what you said. You had a conversa-
18	tion?
19	A Yes.
20	O Don't tell us the words.
21	Did you tell him what Mr. Allen told you?
22	A Yes.
23	Q Did you meet Mr. Allen later that day?
24	A Yes, I did.
25	Q All right.

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1	gwrf 4 Goldinher-direct
2	Prior to meeting Mr. Allen, did you purchase any
3	Training With The Pros?
4	A Right. I bought 200 shares for my husband.
5	Ω What is his name?
6	A Milton Goldinher.
7	Q Where does he reside?
8	A 405 Stegman Parkway, Jersey City.
9	Q Did you buy any shares for yourself?
10	A Yes.
11	Q How much?
12	A I bought initially 100 shares for myself.
13	Q Mrs. Goldinher, let me show you what has previousl
14	been marked as Government's Exhibits 68 and 69, and I ask
15	you if you can identify these?
16	A Yes.
17	Q Tell us what they are, please.
18	A They are the confirmations of the purchase of the
19	stock on the date of April 15, 1969. 100 shares in my
20	account at 64-1/2 and 200 shares in my husband's account
21	at 62.
22	Q Mrs. Goldinher, were these confirmations received
23	by you through the mail at your home in Jersey City?
24	A Yes.
05	O Thomas are the second to the second

Where were they mailed from?

gwrf 5 Goldinher-direct 1 From New York City. 2 MR. SORKIN: Your Honor, we offer 68 and 69 in 3 evidence. (Pause.) 5 MR. GOULD: I have no objection. 6 MR. FELDSHUH: No objection. 7 (Government's Exhibits 68 and 69 for identification 8 received in evidence.) MR. SORKIN: Ladies and gentlemen of the jury. 10 On April 15, 1969 100 shares of Training With The Pros 11 was purchased at 64-1/2 dollars a share for a total purchase 12 price including commission of \$6,495.45, the account of Mrs. 13 Elinor Wien, 405 Stegman Parkway, Jersey City, New Jersey. 14 On the same date 200 shares were purchased at 15 a price of 62 dollars a share for a total purchase price 16 including commission of \$12,490.40 for the account of 17 Mr. Milton Goldinher, 201 St. Paul's Avenue, apartment 4-A, 18 19 Jersey City. You were about to say something with respect to 20 21 69. We were newly married and we were in the process 22 in getting my husband's things from his apartment to 23 our home and his account read from his apartment. 24 Did you see Mr. Allen that day, April 15th? 25

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money with it."

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1	gwrf 7 Goldinher-direct
2	Q Let me direct your attention to approximately the
3	25th April 25th, 1969.
4	Were you and Mr. Paruch sitting at your desks?
5	A I presume so, yes.
6	Q Let me rephrase the question.
7	Was Mr. Paruch having a conversation with either
8	Mr. Jerome Allen or Mr
9	MR. GOULD: I object to that.
10	THE COURT: Yes, sustained. Let's start over
11	again.
12	Put your question.
13	Q Was Mr. Paruch having a telephone conversation?
14	THE COURT: What date are we at?
15	MR SORKIN: April 25, 1969, your Honor.
16	A That is the day that I purchased some more stock,
17	yes. I was having a conversation with either Mr. Stoller
18	or Mr. Allen. I can't recall whom.
19	Q Did you then say something to Mr. Paruch?
20	A Yes.
21	Q Did Mr. Paruch say something on the telephone?
22	A Yes, he mentioned something about Training With
23	The Pros and the fact that it had dropped. I asked him
24	to ask if it was a type of security one would buy for
25	a child because I had just sold some stock in my daughter's

1	gwrf 8 Goldinher-direct
2	account and had some money available and I would have liked
3	to have bought it for her if it was not too risky.
4	Q Did Mr. Paruch say what you asked him to say?
5	A Yes.
6	Q After this conversation did Mr. Paruch say something
7	to you?
8	A Yes. He said he was told he would definitely
9	buy it for a child, had growth potential.
10	Q Growth potential?
11	A Right.
12	O After this conversation with Mr. Paruch and
13	after Mr. Paruch got through with his telephone conversation,
14	did you buy more stock?
15	A Yes.
16	Q Let me show you now what has previously been
17	marked as Government's Exhibit 70 for identification and
18	No. 71.
19	Would you look at 70 and 71 and I ask you if you
20	can identify those, please?
21	A Yes. This is the confirmation of a purchase of
22	my daughter's stock, 70 shares.
23	Q Which number is that?
24	A 71.
25	Q What is your daughter's name?

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1	gwrf 9 Goldinher-direct
2	A Francis Wien.
3	Q Go ahead.
4	A I purchased 70 shares at \$50 a share in her
5	account.
6	In my own account I bought an additional 30 shares
7	at \$50 a share.
8	Q What is the address on these, Mrs. Goldinher?
9	A 405 Stegman Parkway.
10	Q Were these mailed?
11	A Yes.
12	Q From New York to that address?
13	A Yes.
14	Q Did you receive them in the mail?
15	A Yes.
16	MR. SORKIN: Your Honor, we offer 70 and 71.
17	MR. GOULD: No objection.
18	MR. FELDSHUH: No objection.
19	(Government's Exhibits 70 and 71 for identification
20	received in evidence.)
21	THE COURT: Whose names are those in?
22	MR. SORKIN: No. 70 is in the name of Elinor
23	Wien, Mrs. Elinor Wien, 30 shares at \$50 a share.
24	71 is in the name of Miss Francis Wien, 70 shares
25	at \$50 a share.

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Goldinher-direct 1 gwrf 10 2 THE COURT: All right. Thank you. 3 MR. SORKIN: Ladies and gentlemen of the jury, 4 the total purchase price for Mrs. Francis Wien was 5 \$3,534.50. 6 The total purchase price for Mrs. Elinor Wien 7 was \$1,520. 8 MR. GOULD: Does that include commission? 9 MR. SORKIN: That includes commissions. 10 Mrs. Goldinher, do you know a gentleman by 0 11 the name of Ramon N. D'Onofrio? 12 I know him only from the fact that --13 MR. GOULD: I move to strike it out. Yes or no 14 on that. 15 THE COURT: Yes. I agree. 16 I think you ought to help the witness by sharpening 17 up the question a bit. 18 MR. SORKIN: Yes, your Honor. 19 Did you ever have a conversation over the tele-20 phone with a man by the name of Ramon D'Onofrio? 21 Α Yes, sir. 22 When was this? 23 I don't remember the date, but it was at the time 24 that I was at Hirsch & Company, working partners with Mr. 25 Paruch, I was introduced to Mr. D'Onofrio by Mr. Philip

1	gwrf 11 Goldinher-direct			
2	Stoller. I handled a commodity account for him.			
3	Q What did Mr. Stoller say to you concerning Mr.			
4	D'Onofrio, if anything?			
5	A Nothing, just that Mr. D'Onofrio was interested in			
6	purchasing some silver and some potatoes and he was opening			
7	an account with me.			
8	Q You say he was a friend of Mr. D'Onofrio?			
9	A I			
10	MR. GOULD: I object to this.			
11	THE COURT: Just a moment. Sustained as to form.			
12	Q Did he say anything else in the conversation?			
13	A He introduced him and I spoke to Mr. D'Onofrio on			
14	the phone and opened the account and purchased the commodity			
15	Q My guestion is:			
16	Did Mr. Stoller say anything else about Mr.			
17	D'Onofrio?			
18	A No.			
19	Q Did Mr. D'Onofrio have a commodities account			
20	with you and			
21	MR. GOULD: I object to that. What does that			
22	have to do with this case?			
23	THE COURT: I will allow a yes or no answer.			
24	Was such an account opened?			
25	THE WITNESS: Yes.			

1	gwrf 12 Goldinher-direct
2	O Did you ever meet Mr. D'Onofrio?
3	A No.
4	Q Do you know what the commodities were that he
5	purchased?
6	MR. GOULD: I object to that.
7	THE COURT: I don't think we have to go into
8	that.
9	MR. SORKIN: No further questions.
10	CROSS EXAMINATION
11	BY MR. GOULD:
12	O Mrs. Wien, how many times have you been in
13	this building in the last year or so in connection with
14	giving testimony in this case?
15	A I believe twice before today.
16	Q Does that include your appearance before the grand
17	jury?
18	. A Yes.
19	Q You have been in the brokerage business for a
20	considerable period of time, have you not?
21	A Yes, since 1963.
22	Q And at the time that you had the conversation
23	to which you testified with Mr. Allen in which he directed
24	your attention to the Training With The Pros stock, which
25	I think you fixed as being in April, was it, 1969

1	gwrf 13	Goldinher cross
2	at that t	ime you had acted for at least five or six years
3	as a regi	stered representative?
4	A	Oh, yes.
5	Ü	And you knew, did you not, in April 1969 that
6	there was	considerable activity in the market in new issues?
7	A	Oh, yes.
8	Ω	It was a subject of a great deal of talk at the
9	time, isn	't that right?
10	A	Yes.
11	Q	Mrs. Goldinher, you are going to have to speak up.
12	Don't sha	ke your head. He can't get it when you shake your
13	head.	
14		By these new issues people were talking about
15	speculati	ve securities which became public, correct?
16	A	Yes.
17	Q	And they were accompanied by a rather rapid rise
18	in price,	correct?
19	A	Yes.
20	Q	There were many such issues that came out at that
21	time?	
22	A	Correct.
23	Q	You also knew that when they came out there
24	were avai	lable a number of sources of information about
25	these new	issues, did you not?

		1940
1	gwrf 14	Goldinher cross
2	A	Yes.
3	Q	One of those being a prospectus or an offering
4	circular?	
5	A	Yes.
6	Ω	You saw those, did you not, ma'am?
7	A	Not for this stock.
8	ΰ	No, generally. You saw them.
9	A	Of course.
10	Q	They were coming in all the time, weren't they?
11	A	Yes.
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Q And you knew, did you not, that the easiest way to find out all about a company was to look at the registration statement or the prospectus or offering circular?

A Yes.

O That was standard operating procedure, wasn't it?

A Yes.

O Not to press the point, but you knew if you really wanted to know about a new issue everything was gathered in a piece of paper which in some cases was called a prospectus and in others an offering circular?

A Yes.

Q With respect to a company called Training With The Pros, you knew that was a new company, did you not?

A No, I didn't. I was not told it was a new issue, and by the price it didn't occur to me that it was a new issue.

Q You had the pink sheets on your desk, didn't you?

A No. We had one pink sheet that all the reps in the office shared and when I was called I got a firm quote --

Q You will have to be indulgent with me and just answer my questions.

A Yes.

It suggested to me -- I wasn't really familiar

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and I bought the stock.

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You didn't?

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correct?

I purchased it for my immediate family.

Correct, but I didn't recommend it to any customer.

1	rmrf 6	Goldinher-cross 1946
2	Ó	You took a chance on it?
3	Λ	That is what it turned out to be.
4	Q	You took that chance because you thought that Mr.
5	Allen was	a very knowledgeable fellow?
6	A	Right.
7	Q.	Now, madam, didn't Mr. Allen tell you that it
8	was a ver	y speculative security?
9	A	No.
10	Ω	Never mentioned it?
11	A	No. He said it was going to be another IBM.
12	Q	You knew
13	A	McGraw-Hill had an interest in it, General Motors
14	was going	to promote it and it was going to be terrific.
15	Q	He neverosaid it was speculative?
16	A	No.
17	Ď	When you spoke with Mr. Allen, you knew that it
18	was an ove	er the counter security?
19	A	Right.
20	Ω	You had never heard of it before?
21	A	Right.
22	Ö	You never had seen it quoted anywhere before,
23	correct?	
24	A	I never heard of it.
25	Ö	You didn't know anything about the affairs

of the company, did you?

A Nothing but what he told me.

O Did it not occur to you that it was a speculative security?

A Well, in a sense most over the counter securities are speculative and I rarely bought over the counter securities but I felt he wa a fine analyst and the story was good.

q In all fairness, as an experienced registered representative -- let's forget Training With The Pros -- when you find yourself in the presence of an over the counter security of which you never heard before, when you see a very wide spread in the pink sheets, when you don't recognize any of the brokers who are the market makers, does that not suggest to you that you are in the presence of a very speculative security?

A As I say, now, of course, but at the time we were in a very, very hot moving market and there were many securities that were quoted that way.

Q That's right, and they were generally described as speculative securities.

A Some of them were not even speculative. Like American Express used to have a five, six point spread.

Q You knew about American Express, didn't you?

Yes. A

I am talking about securities that you never heard of before, with a 20 point spread with brokers that you were not even sure about making the market, didn't that suggest to you as a seasoned, registered representative that you were in the presence of a speculative security?

MR. SORKIN: Your Honor, I don't think there is any evidence that there was a 20 point spread.

There was about a six or seven point spread, which I called high.

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7	rk7B	1	rmb-1		Goldinher-cross 1949	
		2		Q	That was a pretty good spread on a stock like	
		3	this?			
N.		4	i	A	Yes.	
		5		Q	Didn't that suggest to you this was a speculative	:
		6	securi	ty?		
hez.		7		A	Today it would, but at that time it was very	
		8	common	. 1	t was very common. It was a very hot market and	
		9	there	were	very volatile issues.	
		10		Q	You didn't buy this stock fromStoller or	
		11	Allen,	did	you?	
×		12		A	No, I bought it through Hirsch & Company.	
		13		Q	You told Hirsch to execute a purchase order?	
		14		A	Yes.	
		15		Q	They executed it?	
		16		A	Right.	
		17	,	Q	You don't even know from whom they bought the sto	ock:
(Can)		18		A	No.	
		19		Q	Except it was probably one of those brokers in	
:		20	the pi	nk s	heets?	
		21		A	Right.	
		22		Q	You didn't pay any of the money to Stoller or	
£()		23	Allen?			
		24		A	No.	
		25		Q	You never paid them a dime?	

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A No.

Q The only relationship you have ever had with Mr. Stoller or Allen aside from what you testified to today, as I understand it, is that they suggested securities to you from time to time?

A Yes.

Q And from time to time you bought them?

A Yes.

Q And from time to time you made money on them?

A Yes.

Q Good money?

A Yes.

Q And this is the first time any one of them ever resulted in a loss?

A Yes.

MR. GOULD: Thank you very much.

THE COURT: Mr.Feldshuh.

MR. FELDSHUH: No questions, your Honor. I object to this as not binding upon the defendant Frank.

THE COURT: No, I am taking this testimony as against your client.

MR. FELDSHUH: I want to preserve the record, your Honor.

THE COURT: You have a continuing exception to

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that ruling.

REDIRECT EXAMINATION

BY MR. SORKIN:

Q You answered Mr. Gould, I think, and said the thinness of the stock.

A Yes.

Q Could you explain what that means?

A Well, there is a bid and ask. The bid means the person who wants to buy the stock is willing to pay X amount dollars and the asking price is the person who wants to sell the stock offers it at a particular price. Usually, like for instance a listed stock on the New York Stock Exchange, the difference between the bid and ask is an eighth of a point or a quarter of a point. In other words, the buyer bids 12 and the seller offers it at 12-1/8 or 12-1/4 and then they meet each other on the price and the transaction goes through, but over-the-counter sometimes the spread between the bid and the offer was much, much more than a quarter of a point, it could be 8 points, 10 points and that meant that there were either more buyers than sellers or more sellers than buyers.

Q What does it have to do with the thinness of the stock?

The thinness of the stock means there are not too

things about the company.

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Goldinher-recross

- Q And because it was a thin market you thought you had a chance at a dramatic appreciation in the stock?
 - A Yes.
- Q That was one of the things that entered into your decision to buy it?
 - A Yes.

the question with you.

MR. GOULD: Thank you very much.

(Witness excused.)

MR. SORKIN: Your Honor, we have Mr. Heckmann here and Mr. Dinan and I think your Honor brought out the fact that the confirmations of purchase were mailed to them.

If that is the case, I don't thinkwe need call them.

THE COURT: Let's see if we can understand this.

He wants to call Mr. Heckmann and Mr. Diran to prove that

the advices or confirmations came in the mail. Would you

like to have the witnesses produced?

MR. FELDSHUH: Based upon your Honor's ruling -THE COURT: I have not ruled anything. I am raising

MR. FELDSHUH: I don't care whether they are produced or not.

MR. GOULD: In 40 years I have never required the production of a witness for anything like that. I can't imagine why we would start now.

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THE COURT: You will concede that the Heckmann and Dinan confirmations were actually mailed and received?

MR. FELDSHUH: Of course.

MR. GOULD: Of course.

MR. SORKIN: Your Honor, if I may just have one more moment.

THE COURT: All right.

(Pause.)

MR. GOULD: I will object to it. If you want to bring a witness in, bring him in.

MR. SORKIN: Your Honor, we are going to have to delay the proceedings. We have certain business records and want to introduce them as a business record only --

THE COURT: What firm?

MR. SORKIN: Emanuel Deetjen, your Honor. Mr. Gould won't stipulate to them as business records.

THE COURT: He doesn't have to.

MR. SORKIN: I spoke to Mr. Alenstein about it weeks ago and I never got an answer.

MR. GOULD: I understand counsel's indignation and I am undoubtedly being a villain for not stipulating, but your Honor this is a transcript of an account --

THE COURT: You don't have to argue with me, Mr. Gould.

1	rmb-7 Kelly-direct				
2	You have every right to insist that a witness be				
3	called.				
4	MR. SORKIN: Your Honor, the witness is not here.				
5	THE COURT: All right, we will get him here after				
6	lunch.				
7	MR. SORKIN: That is fine. We will call him up				
8	at lunchtime.				
9	THE COURT: What is next?				
10	MR. SORKIN: The Government calls Joseph Kelly.				
11	JOSEPH A. KELLY, called as a witness by				
12	the Government, having been first duly sworn, was				
13	examined and testified as follows:				
14	DIRECT EXAMINATION				
15	BY MR. SORKIN:				
16	Q Mr. Kelly, are you employed?				
17	A Yes, I am.				
18	Q In what capacity?				
19	A As an investigator.				
20	Q With whom?				
21	A Securities and Exchange Commission.				
22	Q How long have you been so employed?				
23	A Sixteen years.				
24	Q Prior to that, what did you do?				
25	A Worked on Wall Street for a period of about 32				

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Tk 8A	1	gab-1	Kelly-direct 1957
	2	Q	Where did you
	3	·	THE COURT: Just a minute. What year?
	4		THE WITNESS: 1969.
	5		THE COURT: February 11 to June 5.
	6		THE WITNESS: I believe it was later than that,
	7	your Honor	. I am not sure of the exact date. It is
	8	approximate	ely June 12 to the 25th, around that period.
	9	Q	Mr. Kelly, where did you review the pink sheets?
	10	A	At the office of the National Daily Quotation
	11	Bureau.	
	12	Q	Did you prepare a chart?
	13	A	I_did.
	14	Q	Mr. Kelly, what did this chart reflect?
	15	A	The chart shows the low bid and high offer for
	16	each day.	
	17	Q	Is offer the same as asked?
	18	A	That's right.
	19	Q	Did you review all the market makers in the pink
	20	sheets?	
	21	A	I did.
	22	Q	Did you pick out the lowest bid of all of them?
	23	A	I did.
	24	Q	Did you also pick out the highest asked?
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Yes.

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with the number 20 and going up to 72?

What is the vertical column to the left starting

		1959
1	gab-3	Kelly-direct
2	A	That represents various prices.
3	Q	Is that dollars?
4	A	Dollars.
5	Q	What is the horizontal line going through from Feb-
6	ruary 20	to June 12?
7	A	That is the dates.
8	Q	The dates of what?
9	A	The dates of the pink sheets.
10	Q	That you reviewed?
11	A	That is correct.
12		MR. SORKIN: Y our Honor, we offer 106 in evi-
13	dence.	•
14		MR. GOULD: Can we have just a minute to discuss
15	this, yo	ur Honor?
16		THE COURT: Surely.
17		(Pause.)
18		MR. GOULD: Your Honor, the problem with
19	this pro	ffered exhibit is, we don't have the pink sheets which
20	are appr	opriate for a proper foundation for it. I hate to
21	do this.	I don't see how we can check the accuracy. I
22	will sta	and on my objection.
23		THE COURT: I will have to sustain that, Mr.
24	Sorkin,	because a chart can only be based on the underlying
25	data whi	ich should be available for checking if there is any
	11	· · · · · · · · · · · · · · · · · · ·

MR. SORKIN: Your Honor, I agree with you. Again our only alternative is to bring in the pink sheets going back to 1969. We unfortunately can't get a stipulation on this.

Kelly-direct

THE COURT: Defense, as I observed early on another piece of evidence, doesn't have to stipulate if they don't want to.

MR. SORKIN: Correct.

THE COURT: I will sustain the objection on the obvious basis.

MR. FELDSHUH: I join in the objection, your Honor.

THE COURT: I agree. 106 will not be received

at this point.

Q Would you take the witness stand, Mr. Kelly.

Mr. Kelly, let me show you what has previously been marked as Government Exhibits 15 and 15D.

Have you seen those before?

- A Yes, I have.
- Q Mr. Kelly, did you --

MR. SORKIN: I should point out, your Honor -we ask that this be taken subject to connection, the identification as business records of these documents which we
discussed earlier.

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what that means, your Honor.

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MR. GOULD: I haven't the faintest idea

THE COURT: In any event, you go ahead, Mr.

Sorkin.

We will disregard the last and see what happens.

Go ahead.

Q Did you review those documents?

A Yes, I have.

Q Did you observe on those documents the security
Training With the Pros?

MR. GOULD: I object to anything on the documents, your Homor, what he saw on them. They are not in evidence.

THE COURT: I know, Mr. Gould. The trouble is one thing at a time. Apparently you examined these documents which have the name of Emanuel Deetjen on them.

THE WITNESS: That's correct.

THE COURT: All right. Next questions.

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1	8b am gwrf 1 Kelly-direct
2	O Did you prepare a chart based upon what you
3	observed on those documents referring only to Training With
4	The Pros?
5	A I did.
6	Q Would you please stop off the witness stand
7	Mr. Kelly.
8	Mr. Kelly, does Government's Exhibit
9	MR. SORKIN: Will you mark this as Government's
10	Exhibit 107.
11	(Government's Exhibit 107 marked for
12	identification.)
13	Q Let me rephrase the question.
14	What does Government's Exhibit 107 reflect?
15	A That reflects all purchases and sales of Training
16	With The Pros made by Emanual Deetjen & Company for the
17	account of Bank Hofmann.
18	MR. GOULD: It doesn't say that. He better take
19	it back and mark it right, your Honor.
20	MR. SORKIN: We would be happy to make the
21	necessary addition at lunchtime, your Honor.
22	O What else, Mr. Kelly?
23	A It shows the trade date, the settlement date,
24	number of chares bought, price and the amount.
25	Q Amount of what?

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1	gwrf 2 Kelly-direct
2	A The amount due. It also shows the number of sales,
3	prices and the amount payable.
4	O For what period, Mr. Kelly?
5	A From February 25, 1969 through May 23rd of 1969.
6	That would be trade dates.
7	Q What is the difference between trade date
8	and settlement date?
9	A Trade date is a date that the trade actually
10	takes place. The settlement date represents when payment
11	is due.
12	MR. SORKIN: Your Honor, subject to connection, we
13	offer 107 in evidence.
14	THE COURT: Not only subject to connection. The
15	point has been well made already, the caption is incomplete.
16	MR. SORKIN: Subject to making the necessary
17	addition with the black marker, your Honor, and subject to
18	getting the proper person to identify 15-A through D.
19	THE COURT: You can offer this later. I'm not going
20	to receive these documents now. We will wait until we
21	get this sort of thing connected up. Either it is
22	going to be or it isn't. It is very simple.
23	MR. SORKIN: Fine, your Honor.
24	We have no further questions of Mr. Kelly.
25	THE COURT: I take it you gentlemen don't want

gwrf 3

Kelly-direct

to ask any questions of Mr. Kelly, or do you?

MR. FELDSHUH: No questions.

MR. GOULD: I have nothing.

THE COURT: Thank you, Mr. Kelly. You may be excused, sir.

(Witness excused.)

MR. SORKIN: We have one other document, your Honor, which is a document in my office and I must go down and get it.

THE COURT: Say this again. We have what?

MR. SORKIN: We are unable to get another stipulation from defense counsel. Accordingly, I must go to my office to get the necessary document to show once again to Mr. Derfner and Mr. Feldshuh.

THE COURT: May I suggest that in view of all of this, perhaps we better take the luncheon recess now and we will resume at an appropriate time so everybody will have a chance to get to lunch and you will have a chance to do this.

MR. SORKIN: Yes, your Honor.

THE COURT: Mrs. DeBartola and ladies and gentlemen, in view of this development we will suspend now for luncheon and we will resume promptly at a quarter to 2:00. It is now 12:30. Very good.

(Luncheon recess.)

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AFTERNOON SESSION

1:50 p.m.

(In open court, jury present.)

MR. SORKIN: Your Honor, we are ready to call the next witness.

Mr. Kelly, I think you were through. I don't think anyone had any questions for you.

THE COURT: That's right, Mr. Kelly was excused. Who is your next witness?

MR. SORKIN: The gentleman from the National Quotation Bureau, your Honor. He is back there now.

DOMINICK DE OUARTO, a witness
called by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. SORKIN:

- Q Mr. DeQuarto, are you employed, sir?
- A I am, sir.
- O In what capacity?
- A As a library manager, National Ouotation Bureau.
- Q How long have you been so employed?
- A 24 years with the company.
- Q For the company, National Quotation Bureau?
- A Yes.

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Q Mr. DeQuarto, we are going to show you certain records that are going to be brought in right now, if the Court will just bear with me for one moment.

They are quite voluminous and we are going to have two of our associates carry them in.

(Pause.)

O Mr. DeQuarto, I am going to show you now what we will mark as 106-A.

MR. GOULD: You don't have to have all of these marked, your Honor, if you will just tell us what they are.

MR. SORKIN: Your Honor, we would like to mark them.

Mr. Gould suggested we get the proper foundation, and

we are going to get the proper foundation.

MR. GOULD: I don't think that is quite called for, your Honor. I didn't impose any great burden on these people that they shouldn't have done months ago. I t could have been done right the first time.

MR. SORKIN: Your Honor, we have been through that

THE COURG: Gentlemen, I don't think we need to

argue this. I said to the Government that I would sustain

the defense objection and let them put in the proper

foundation. I assume this is their attempt to do that.

Let's go on.

(Government's Exhibit 106-A through 106-Q,

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Pink sheets.

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Mr. DeQuarto, can you identify --

inclusive, marked for identification)

THE COURT: Just a moment, please. Before we get into this, are we to understand that this is 106-A to and including -- what letter?

MR. SORKIN: Q.

THE COURT: All right, sir, go ahead.

Mr. DeQuarto, car you identify Government'. Exhibits 106-A through and including 106-Q?

They are the product of our national daily quota-Α tion service. They are compiled ---

Please keep your voice up, sir.

They are compiled by broker-dealers who submit listings for various securities. They are submitted to our service and they are put in an alphabetical order, and consequently the result is that they are printed. All of the names of the securities, the prices, quotations they represent, and the dealers who submit them.

When you say the prices they represent, are you referring to the bid a d asked?

The bid and asked quotations, that's correct.

Is there any common name for these among brokers? What are they called?

lhrf 3a 1967a DeQuarto-direct Q Mr. DeQuarto, when did you last see these records, sir? A I see them every day.

1 2 3	1hb-1 DeQuarto-direct 1968 Q These records, 106A through Q?
3	
	A Today.
4	Q When was that, sir?
5	A Just prior to preparing to bring them over.
6	MR. SORKIN: Your Honor, we offer 106A through
7	Q in evidence.
8	MR. GOULD: What period do they cover?
9	THE COURT: Yes, can't we get that?
10	MR. SORKIN: Yes, we can, your Honor.
11	Q Do you know what period they are, Mr. DeQuarto?
12	A February 1 through June 20, 1969.
13	MR. GOULD: May I just inquire on the voir dire
14	as to one of these, your Honor?
15	VOIR DIRE EXAMINATION
16	BY MR. GOULD:
17	Q Mr. DeQuarto, do I understand you to be telling
18	us that the firm by which you are employed, the National
19	Quotation Service isn't that it?
20	A Right.
21	Q Every day gets from brokers reports as to what th
22	bid and ask was on over-the-counter securities, correct?
23	A Correct.
24	Q Certainly in 1969, that was the practice? That
25	was before the NASDEQ, wasn't it?
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DeQuarto-direct

- A Right.
- Q So they get these reports, and then what they is they put them in here, correct?
 - A · Yes.
- Q Each one of these is a daily report on thousands of securities, isn't it?
 - A Yes.
- Q So if you wanted to find out about Training With the Pros, well, take the first day here on just the one I happen to pick up here, and you turn to T -- correct?
 - A Correct.
- Q Under "T," if there is anything reported on Training With the Pros, it would be in here, correct?
 - A Correct.
- Q Now let's take this one that I am on, just so we understand what it is. This is the so-called pink sheet, even though it is white?
 - A That is not it, though.
 - Q Show me what is.
 - A The pink sheets.
 - Q What is this one on top?
 - A This is the --
- MR. SORKIN: Your Honor, I object. Is this voir dire or cross-examination?

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MR. GOULD: It is voir dire.

THE COURT: Please, I don't really understand either one of you. Do you want to offer all of these, and I hope only with respect to the entries on pages or sheets which have to deal with Training With the Pros, is that it?

MR. SORKIN: Exactly.

MR. GOULD: We have already established that a lot of this has nothing to do with --

THE COURT: I would have assumed that before you even opened your mouth, and so would you.

MR. GOULD: I will subside.

THE COURT: There is no doubt about it. You have seen these many a time, as has other counsel and the Judge. Let's not fool ourselves. We know that there is a lot in here that has nothing to do with this case, you are absolutely right and I couldn't agree with you more.

MR. GOULD: That is all I wanted to do.

THE COURT: You want to offer every one of these books to the extent they contain any bid and asked quotations on Training With the Pros, and that's it?

MR. SORKIN: Yes, your Honor.

THE COURT: Do you want to ask any questions further, gentlemen, of Mr. DeQuarto?

MR. GOULD: I have nothing further.

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MR. FELDSHUH: No questions, your Honor.

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THE COURT: Do you object to the proffered entries

in these magnificent volumes?

MR. GOULD: No, your Honor. To the extent that any of them contains a reference to Training With the Pros, I concede that it is as close to an official quotation on a particular day as it is possible in our society to get.

THE COURT: Very good.

(Government Exhibits 106A through 106Q, inclusive, were received in evidence.)

106 in evidence.

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MR. SORKIN: Your Honor, at this time we reoffer

Kelly-direct

MR. GOULD: We still have a step omitted in the foundation, your Honor. I don't want to try his case. I suppose what we ought to do is get Mr. Kelly back and let Mr. Kelly testify as to the correlation between the entires in here and what he put on the chart.

MR. SORKIN: I thought Mr. Kelly testified he was at the NQB and he reviewed the pink sheets of Training With the Pros. He was up there for cross-examination. We have excused him.

THE COURT: That's true. That isn't the point. Again, Mr. Sorkin, it is not my function to try the case for you either. To be perfectly precise about it, defense counsel has got a point. We don't know for sure just exactly what Kelly used. I assume, but I don't think if they are going to make a point of it I can rely on my assumption.

MR. SORKIN: Then we will just have to get Mr. Kelly back. I thought he testified he reviewed the pink sheets --

THE COURT: He certainly said those words. suppose technically we don't know that he reviewed --

MR. GOULD: I am not just being captious about this, your Honor. These pink sheets have a variety --

Kelly-direct

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THE COURT: I am not accusing you of being captious. I just agreed with you.

MR. GOULD: I am made out to be some kind of villain.

THE COURT: I am not making you out as a villain,

I am sustaining your objection.

MR. GOULD: Here he is.

JOSEPH A. K E L L Y resumed.

DIRECT EXAMINATION (continued)

BY MR. SORKIN:

Q Mr. Kelly, would you look at Government exhibits which have previously been admitted into evidence, 106A through and including 106Q.

MR. SORKIN: If Mr. Gould has no objection, your Honor, we ask that he just look through one of them rather than spend his time looking through all of them.

MR. GOULD: One will do excellent.

MR. SORKIN: Fine.

(Pause.)

This is on June 13, 1969. Α

Mr. Kelly, why don't you take an earlier date. Why don't I show you, Mr. Kelly, 106N.

This is on May 28 -- May 29, 1969.

Mr. Kelly, when you prepared the chart from which 106 was prepared by the artist, did you review 106A through

	1974
. 1	gab-3 Kelly-direct cross
2	Q inclusive?
3	Λ I did.
4	Q From those records did you prepare your chart?
5	Λ I did.
6	MR. SORKIN: No further questions, your Honor.
7	MR. GOULD: Just one second now.
8	(Pause.)
9	CROSS-EXAMINATION
10	BY MR. GOULD:
11	Q Mr. Kelly, when you prepared this document, this
12	106 for identification, you did it using the entries that
13	you found in the pink sheets?
14	A That is correct.
15	Q Like the one you have in front of you now?
16	A That's correct.
17	Q Where you found more than one broker, did you ave
18	age the bids and the asked?
19	A No, I did not.
20	Q Why not?
21	A I just took off the low bid and high offer.
22	Q Were they always the same? Were the bids always
23	the same?
24	A No, they weren't.
25	O And the offers were always the same?

1	gab-4	Kelly-cross
2	A	No.
3	Q	So what you were trying to do was to use the
4	statistic	al method that would get the largest spread,
5	correct?	
.6	A	That's correct.
7	Q	Why did you do that? Was there some reason for
8	trying to	get the largest spread rather than the median spread
9	A	No, none whatsoever.
10	Ó	Did anybody tell you to do it that way?
11	A	No.
12	Ď	Did anybody tell you how to do it?
13	A	No, they didn't.
14	Q	You have done these charts before, haven't you?
15	A	That's correct.
16	Q	And you have done them from listed securities?
17	A	That is correct.
18	Q	For listed securities?
19	. А	That is correct.
20	Q	And we always used median bid and asked, haven't
21	we?	
.22	A	It depends on what the circumstances are.
23	Q	The fair way to do it is to take the median, isn't

Q The fair way to do it is to take the median, isn't

it?

MR. SORKIN: Objection as to what is the fair way,

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	**	
1	gab-5	Kelly-cross 1976
2	your Honor	
3	¥	THE COURT: Yes.
4		MR. GOULD: I will withdraw that.
5	Q	The normal recognized way.
6		MR. SORKIN: Objection as to is what the normal
7	recognized	way.
8		MR. GOULD: If he knows.
9		MR. SORKIN: Objection, your Honor.
10	,	THE COURT: I don't know the normal way. I
11	can't	
12		MR. GOULD: Can we ask him if there is a normal way?
13		THE COURT: I think you could.
14	. *	MR. GOULD: All right.
15	Q	Mr. Kelly, you have heard the term median bid and
16	asked?	
17	Λ	Yes.
18	Q	That is a word you have heard many times in this
19	business?	
20	A	That's correct.
21	Q	That means you average all the bids and you average
22	all the of	ffers and you use the average of those in the
- 1	ł .	!

Isn't that the way you have normally donethese

That's correct.

comparison?

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charts?

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A No, every case is different. It depends on what you are looking for.

Q Did you check to see how many shares were involved in the bid and asked?

- A There is no way of telling.
- Q Did you inquire?
- A How could you inquire? There is no way of telling.
- Q Would you agree with me that if you had an offering of one share at 40 and an offering of 10,000 shares at 43, you would use the one share, right?
- A No, because one share doesn't appear in these sheets.
 - Q But you didn't know that?
 - A Yes, I do. It never does.
 - Q What is the minimum number of shares?
 - A 100.
- Q Let me change my example. If you had 100 shares offered -- let's take it on the bid side -- 100 shares bid at 45 and 10,000 bid at 46, you would have taken which one?
- A It depends on what you mean. As a seller, a buyer or what?
 - Q Don't you know what I meant?
 - A No, I don't. I don't understand your question.

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1	gab-7	Kelly-cross	1978
2	Q	Let's see if we can understand each ot	her. Open
3	that to Tr	aining With the Pros, anyway.	
4	A	This is on May 27th.	
5		MR. GOULD: We are looking, your Honor	, at the
6	entry for	May 27.	
7	. Ω	And you will agree with me that the en	ntry for May
8	27 shows A	mswiss International Corporation, then	it gives
9	their tele	phone number and it shows that they bid	d 45 and
10	they were	asking 55, correct?	
11	A	That's correct.	
12	Q	The next entry is Edward F. Henderson	& Company.
13	They were	bidding 45, right?	
14	A	Yes.	
15	Q	And they were asking 55?	
16	A	Right.	. I' ·
17	, 'Ω	And then Burtner Bros. of New York wa	s bidding 42
18	A	That's correct.	
19	Q	And asking 52?	
20	A	That's correct.	* .
21	Q ·	So do I understand it that when you m	nade up
22	your char	t you used the 42 here and the 55 here?	?
23	A	That's correct.	

The second secon

That's correct.

So that you could get the maximum spread?

gab-8

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MR. SORKIN: Objection, not that he could get it, what the pink sheets reflected as the maximum spread.

H. 사용화로 주의 다른 사용 보는 이 이번 모든 사람들은 보고 있는 것이다. 함께 다른 사용 기계를 받는다.

THE COURT: This is a semantical matter, gentlemen.
We have gone through this, Mr. Gould. I thought we had
already gotten an answer to this.

All right.

MR. GOULD: I have no objection to the chart.

THE COURT: All right.

MR. FELDSHUH:

CROSS-EXAMINATION

BY MR. FELDSHUH:

Q Mr. Kelly, in the pink sheet itself, they do not reflect sales, do they?

A No, they do not.

Q Actually the quotations that you see there are given the night before, are they not?

A That's correct.

Q And there are many occasions from your experience where in the next morning or the next day a broker if called could say, I am not longer interested in that security, couldn't he?

Λ That happens, yes.

Q Right. So he is not making a market in that security, is that right?

Kelly-cross gab-9 Well, he is shown an indication of interest. Merely an indication of some interest, is that 0 right? That's correct. That is correct, isn't it? 0 That is. Α So that based upon this you couldn't tell in your examination of the pink sheets as to whether or not a single sale was, in fact, made, isn't that correct? That's correct. Mr. Kelly, with regard to Training With the Pros, were you aware that the stock was split? Yes, I was. Λ

Did you in the course of your investigation make an adjustment for the fact that the stock was split?

The chart that is made up is made up before the split took place. That is all on the original stock.

And nothing else?

Nothing else.

-Q Except, as you have previously testified, you took the very low from one broker and if there was another broker who quoted a high, you didn't match within the brokers themselves?

No, not as if he were trading the stock. No, I

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gab- 9a did not.

Kelly-cross

End 2A

MR. FELDSHUH: No further questions.

1 2b pm gwrf 1 Kelly-redirect MR. SORKIN: Your Honor, we offer 106. 3 MR. GOULD: I have no objection to it. MR. FELDSHUH: No objection. (Government's Exhibit 106 for identification 6 received in evidence.) REDIRECT EXAMINATION 8 BY MR. SORKIN: Mr. Kelly, can you come down here now. 10 Again, for the jury's benefit, just tell us, 11 please, the vertical line, the horizontal line and what the 12 black and the red lines are. 13 MR. GOULD: We have had this, your Honor. 14 MR. SORKIN: This is so the jury which is seeing 15 this for the first time, can get the opportunity of sceing 16 what Mr. Gould has seen already, your Honor. 17 THE COURT: I don't have any objection to your 18 just pointing out to the jury what Mr. Kelly already told 19 us. If you want Kelly to repeat, fine. I see no harm to 20 anybody. 21 A The horizontal line represents the date of the pink 22 sheets, the vertical line represents the price, the 23 highest -- lowest bid and the highest offer on each particular 24 day --25 MR. GOULD: I move to strike out "price".

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1	gwrf 2 Kelly-redirect
2	By his own testimony it doesn't reflect the price.
3	THE COURT: I would agree. It surely doesn't.
4	0 Go ahead.
5	A The lowest bid and the highest offer.
6	Q What is this down here?
7	A That is the actual bid or offer.
8	Ω In dollars?
9	A In dollars.
10	O Thank you, Mr. Kelly.
11	MR. SORKIN: You are finished. Mr. Kelly. I
12	have no further questions.
13	(Witness excused.)
14	MR. SORKIN: Your Honor, the Government calls
15	Philp C. Bloom.
16	PHILIP C. BLOOM, called as a
17	witness by the Government, being first duly sworn,
18	testified as follows:
19	DIRECT EXAMINATION
20	BY MR. SORKIN:
21	O Mr. Bloom, are you employed, sir?
22	A Yes, sir.
23	O In what capacity?
24	A At present?
25	Ω Yes, sir.

1	gwrf 3 Bloom-direct 1983
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	de Company.
3	O Prior to Purcell, Graham, where did you work?
4	A I worked for Havenfield Corporation which was the
5	successor of Emanuel Deetjen & Company.
.6	Q Would you tell us what you did at Emanuel Deetjen
7	& Company?
8	A I was the cashier there.
9	Q Let me show you, Mr. Bloom, what has previously
10	been marked as Government's Exhibits 15-A through 15-D.
11	A Right.
12	O Can you identify those, sir?
13	A Yes, sir.
14	Ω What are they?
15	A They are securities that were traded for this
- 16	bank account in Switzerland.
17	O Which account?
18	A Bank Hofmann.
19	Q Just tell us what 15-A is. What is the document,
20	stapled documents?
21	A That I couldn't answer.
22	Q Is it a monthly statement, a confirmation, a
23	mortgage, a deed? What is the document?
24	A This is a closing balance of the monthly statement.
25	Ω For whom?

1	gwr£ 4	Bloom-direct 1984
2	A	Bank Hotmann.
3	Ω	Did Bank Hofmann have an account at Emanuel
4	Deetjen?	
5	У	Yes, sir.
6	0	For what month, sir?
7	A	This is 1969, March.
8	Ú	March 1969. That is 15-A.
9		Would you look at 15-B, please.
10	Λ	Yes, sir.
11	Q	What is 15-B?
12	А	Well, that was the activity for the month of April
13	'69.	
14	Q	What is the document? Is it a closing balance, a
15	monthly s	tatement? What is it?
16	A	That was a statement that occurred during the
17	month, ea	ch entry.
18	Q	What month is that from?
19	Α	From April '69.
20	Q ·	All right.
21 .	A	From 4/1 all the way to the end, 4/30;
22	all the a	ctivity during the month.
23	Q	That is 15-B.
24		Would you look at 15-C, please.
25	А	Right, sir. That was the activity from Bank

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Hofmann from May 1st all the way to the end of May.

Q Would you look, sir, at 15-D, I will ask you what that is.

A That is the activity, Bank Hofmann, from June 2, '69 through June 30, '69.

Q What type of document is it?

A Well, it has entries made, stock received --

On what? What is the document, a closing balance

A No, daily entries.

0 What is the piece of paper? Do you have a name for it?

A Well, it is a daily statement.

Q It is a statement?

A That's right, of the activity in that account; each day's activity as you will notice on here.

Q Were these records, Mr. Bloom, kept in the ordinary course of the business of Fmanuel Deetjen & Company?

A Absolutely.

Q Was it in the ordinary course of Emanuel Deetjen's business to make and copy such records?

A Oh, yes, very necessary by the Stock Exchange and SEC and everybody. You had to keep records.

MR. SORKIN: Your Honor, we offer 15- λ through D in evidence.

1	gwrf 6 Bloom-direct 1986
2	MR. GOULD: Can we see them, please?
3	THE WITNESS: Very important.
4	(Pause.)
5	THE COURT: Mr. Bloom, are you the cashier at
6	Purcell, Graham?
7	THE WITNESS: No, sir.
8	THE COURT: What do you do there?
9	THE WITNESS: I'm just an ordinary clerk now.
10	THE COURT: Thank you, sir.
11	MR. GOULD: May I ask him a few questions about
12	these, your Honor?
13	THE COURT: Yes.
14	VOIR DIRE EXAMINATION
15	BY MR. GOULD:
16	Q Mr. Bloom, at the time these papers, which you
17	have now identified, 15-A through D for identification,
18	were made, you were a cashier at Deetjen, right?
19	A Yes, sir.
20	O Every customer that they had had such a piece
21	of paper, didn't he?
22	A That's right.
23	Q There was kept such a record for every customer
24	in the house?
25	A It's a statement.

With your firm?

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1	3a pm lhrf Bloom-direct 1990
2	MR. SORKIN: I have no further questions of Mr.
3	Bloom, your Honor.
4	THE COURT: Thank you, Mr. Bloom, you may be
5	excused, sir.
6	THE WITNESS: Thank you, sir.
7	(Witness excused.)
8	MR. SORKIN: Your Honor, the Government recalls
9	Joseph Kelly.
10	MR. FELDSHUH: Who?
11	THE COURT: Before we recall Kelly, do you mean now
12	you want to get in his second chart?
13	MR. SORKIN: That is correct, your Honor.
14	THE COURT: Maybe we can obviate that. Mr.
•=	Feldshuh and Mr. Gould, would you want Mr. Kelly recalled
16	to identify a second chart which you remember consists simply
17	of posting of various materials which comes off 15-A to
18	and including D?
19	MR. GOULD: May we just look at it again?
20	THE COURT: Surely.
21	MR. GOULD: Don't we have it written on a piece
22	of paper that we can just pick up so we don't have to work
23	with this big thing? Do you have it on a piece of paper?
24	MR. SORKIN: I do not have it with me.
25	MR. GOULD: Do we understand the Government

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lhrf 2

Bloom-direct

1991

to represent that this is a schedule of all of the transactions in Training With The Pros which are reflected in the statements 15-A through D in evidence?

MR. SORKIN: That is correct.

MR. GOULD: If Mr. Kelly came back, he would say he took all of the reference to Training With The Pros, put it on a piece of paper, and then the Government paid an artist who put them on this big sheet, is that what happened?

MR. FEDDSHUH: And it was prepared by Mr. Kelly?

MR. SORKIN: That is exactly what happened.

MR. GOULD: I have no objection.

MR. FELDSHUH: Based upon those representations, I have no objection.

(Government's Exhibit 107 was received in evidence.)

MR. SORKIN: Ladies and gentlemen of the jury, you can see from this column, trade date, day of the transaction, settlement date, which is in this column, the number of shares bought, the price and the amount. The chart reads this way, 3/12 and up here, 3/13. 4/15, 4/15/69, the shares sold. On this side there is no shares sold, but shares begin being sold on 4/15, at these prices and for these amounts.

1	lhrf 3 Bloom-direct 1992
2	Your Honor, the Government now calls Thomas
3	Doonan.
4	THOMAS PATRICK DOONAN,
5	having been previously duly sworn, resumed the
6	stand and testified further as follows:
7	DIRECT FXAMINATION
8	BY MR. SORKIN:
9	Q Mr. Doonan, how are you employed?
10	A I am employed as
11	THE COURT: We have been through this. We all
12	know who Mr. Doonan is.
13	MR. SORKIN: I'm sorry, your Honor. I thought
14	that was only on the hearing.
15	Q Mr. Doonan, let me direct your attention to Novembe
16	21, 1973. Did you meet Mr. Stoller on that date?
17	A Yes, sir.
18	THE COURT: November 21st when, Mr. Doonan?
19	THE WITNESS: 1973.
20	Ω And did you, Mr. Doonan, obtain from Mr. Stoller
21	certain documents?
22	A Yes, I did.
23	O Let me show you now what has previously been
24	marked as Government's Exhibit 76, 77, 78, 79 and 80
25	and 80-A. Would you look at these documents?

them?

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I ask you now, please, if you can identify

A These are the documents -- these are some of the documents I took from Mr. Stoller on that day.

O How can you identify them?

A Well, 76 and 77 I placed my initials on the back.

78, 79 and 80, I have copies of these in my briefcase here,

I made copies of these prior to giving them to you, and 80-A--

MR. GOULD: He doesn't have to, your Honor.

I will concede that they were taken from Mr. Stoller on

November 21, 1973.

MR. SORKIN: Your Honor, we offer them in evidence.

MR. GOULD: I object to 76 for identification as having no signature, being immaterial, unrelated to the case, having no probative value. The same with 77. Let's dispose of those two.

76 and 77 I object to as being unsigned, no probative value, no materiality to the case.

THE COURT: Well, I must say that I agree with the latter point; perhaps the first point as well. I don't see what these are. True, they were turned over to Mr. Doonan and representing your office as an investigator, but that doesn't make them admissible, as such.

MR. GOULD: Your Honor, it is not that they were turned over. They were taken from him. That's his testimony.

THE COURT: I won't argue the point.

MR. GOULD: There is a difference.

THE COURT: I said I won't argue the point. The point is, just because they were turned over or taken from him doesn't make them admissible.

MR. GOULD: That's my point.

THE COURT: I swear, there are times when I think
we could look at the lights and argue whether they are
not on, the way we discuss things in this case. I
wasn't making that point at all. I am saying I agree
with you. Offhand, I don't really see any relevance here,
and I don't reall know for sure whether anybody ever
signed these or filled out the blanks. So I am sorry,
Mr. Sorkin, but I sustain the objection on both counts.

MR. GOULD: Now with respect to 78-D, I object to that because I challenge that it has any relevance or materiality --

THE COURT: Can we agree it is 78?

MR. GOULD: 78 for identification. It was the

way they are marked. I'm sorry, your Honor.

THE COURT: I agree, Mr. Sorkin.

MR. SORKIN: Your Honor, may I be heard on 78, 79 and 80?

THE COURT: I think, since you want to go into the contents -- notice that the addressee is a man named Vaterlaus, the Swiss Bank Corporation.

MR. SORKIN: That is correct, your Honor.

THE COURT: It also deals with concerns that we havn't heard about in here.

MR. SORKIN: I must respectfully disagree. Swiss Bank Corporation and --

THE COURT: I know we have heard of Swiss Bank

Corporation. I am not talking about that. Asmara,

S.A., for example, loans to that firm. What does that have
to do with our case? We haven't heard anything about that.

MR. GOULD: The same on 80, your Honor.

THE COURT: What about 79?

MR. GOULD: Let me come back to 79 because I want to dispose of 80-A for identification. 80-A for identification, I really don't know how to argue it, I suggest your Honor look at it. It consists of a series of photostats or Xeroxes, including a library card from the Hewlett-Woodmere Public Library. The business card of an assistant vice-president of the Swiss Bank, Ballmer -- Swissair, it seems, has made Mr. Stoller an honorary member of the Swissair Travel Club.

automobile license.

The next one, Walter Vaterlaus, his business card, the one we have here. The next one, I think it is the back of the Swissair thing, isn't it? It looks to me like an automobile license. All right. Another business card. Another one. Stoller's business card. Stoller's

the second of th

MR. SORKIN: Your Honor, we can block out -MR. GOULD: No, no, this has all been offered.

I have a right to comment on what is being offered.

This is ridiculous, your Honor.

MR. SORKIN: Your Honor, we have no objection to taking out the library card and the license, but there are certain cards in there which I think are certainly relevant to this case.

THE COURT: I assume you must or otherwise you wouldn't have offered them.

This is quite a potpourri, and when I sav "this"

I am referring to 80-A, and although it is all very

fascinating, and I am glad to know that at least two of

the five towns have a joint library, and so on, why,

I am not sure that really that makes all of this admissible.

MR. SORKIN: Your Honor, I agree with Mr. Gould.

THE COURT: I will hear you out during the recess, I quess, because that doesn't impress me much,

THE COURT: I take it you object to80, Mr. Gould?

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MR. GOULD: Wait a minute, Mr. Doonan. First of all, I object to the use of the word seized in here, in the question.

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THE COURT: It seems to me at the moment we ought not to have a question like that. If I were Mr. Doonan, I would object to your questions, Mr. Sorkin. You asked me one and then put another. One thing at a time.

1	1hrf 10 Doonan-direct 1999
2	He is your witness. Be patient.
3	Q Where was this obtained from Mr. Stoller?
4	A Mr. Stoller was arrested at
5	MR. GOULD: I move to strike that.
6	THE COURT: That's right, we don't need to go into
7	the arrest. Is there some magic in this building, is
8	that what you want?
9	Q Where, the physical location, was this obtained?
10	A In this building, the United States Courthouse,
11	Foley Square.
12	Q Where did you first meet Mr. Stoller on November
13	21st?
14	MR. GOULD: I object to that.
15	THE COURT: Yes, we don't have to get into that,
16	Mr. Sorkin.
17	MR. SORKIN: We offer 80-B.
18	MR. GOULD: Can we see what it is you have got
19	there?
20	(Pause.)
21	MR. GOULD: It looks like a hotel key. I object
22	to this. I don't know what this is being offered for.
23	THE COURT: I must say, I don't understand the
24	relevance of that, so I am going to sustain the objection.
25	MR. SORKIN: Your Honor, I have no further

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questions of Mr. Doonan other than to set up certain devices here, and we would like a short recess so that we may do that.

THE COURT: All right. While Mr. Doonan is doing whatever he is going to be doing, I want to see you and Mr. Gould and Mr. Feldshuh and the Court Reporter in chambers. We will take a 10 minute recess, ladies and gentlemen.

(Jury not present.)

(In the robing room.)

THE COURT: Two things. Mr. Sorkin, I have had occasion to read your affidavit and Mr. Thomas Day Edwards affidavit which I received from you between ten of 2:00 and 2:00 o'clock.

Also, there came in a few minutes after that a memorandum of law. My reading of that material suggests that we are like two freighters passing in the night. There isn't a smidgin, except maybe a little scatological detail in your affidavit, but basically there isn't anything in these papers that I didn't understand the Government to be arguing before. I also detect, worse than that, that Mr. Edwards apparently has been told that I mistrusted his motives, or something, which I certainly didn't.

I know Mr. Edwards and I have great respect for his integrity and ability. I never made any attacks on

with the Government, including Mr. Edwards, that's all.

I'm sorry, but that's all it is. But because there seemed to be some undertow here that I can't quite fathom, I would suggest to you that you tell Mr. Edwards that I think he better come up here and make his point face to face, because I don't understand what this is all about.

I don't know whether the defense counsel understand it any better than I do, but I think rather than burden them, I just better say there is nothing in those papers that is at all new, novel, different, or whatever, or of any substance than has already been considered by this Court.

I don't blame you for disagreeing with me, and I don't even mind rehearing you, but since it seems to be the same old arguments all over again, I don't see much point.

I think we better get Edwards up here. There is something about that affidavit that makes me think that he has got a misconception of what is going on here. I am not blaming you for that or Mr. Flannery or Mr. Doonan or Mr. Noonan or whoever. I just think there is some misunderstanding and I think he better come up and be heard.

I must say finally, I don't see any particular materiality or relevance to any of these documents

which Doonan got from the luggage of Mr. Stoller the day he stumbled into the Swissair lounge, the day of the arrest last November. I just don't see any point in any of this. From your own viewpoint.

MR. SORKIN: Your Honor, number one, and I am looking at the key, 80-B, Mr. Feeney testified that when they had the discussions in Switzerland with the payoffs to Mr. Allen and the swimming pool and the sunshine, and so forth, he met Mr. Stoller at the hotel. This is a key which we seized from Mr. Stoller when he came back from Switzerland on his person with the hotel name on it. I think at the very least it is circumstantial evidence and corroborates the testimony of Mr. Feeney.

THE COURT: Wait a minute, I don't understand that. I have no doubt that Stoller stayed in the Noller Park and the Baur au Lac or anything like that. Most people who go over as much as Stoller did --

MR. SORKIN: Respectfully, you may not have a doubt but I don't know whether the jury has the same --

THE COURT: You dump in a key like this, it doesn't mean anything. The guy could be with some dame, it could mean that he is a thief of hotel keys and soap and towels, of which about 60 million Americans clearly are --

MR. GOULD: You left out shower heads.

 THE COURT: And ashtrays. What are you doing?

MR. SORKIN: The only person that has tied Mr.

Stoller to being in Switzerland in the fall of 1973 is Mr.

Feeney. Mr. Feeney's testimony is not corroborated. He is the only person that places Mr. Stoller at the hotel

Noller Park. In fact, he is the only person that places

Mr. Stoller in Switzerland in the fall of 1973.

MR. GOULD: Mr. Stoller has a passport.

MR. SORKIN: That is from December, 1972 on.

MR. GOULD: I was in the middle of a sentence.

MR. SORKIN: I was, too, Mr. Gould, with all respect.

MR. GOULD: You finish your sentence and then
I will pick mine up. Yours is more important.

MR. SORKIN: At the very least, your Honor, I think this goes not to the admissibility but the weight of it. I think it is corroborative and circumstantial of the fact that Mr. Stoller was in Switzerland in the fall of 1973, came back from Switzerland and had this key in his possession, and I think the Government is entitled at the very least to offer it and let the jury decide whether it was picked up on the way or whether it was -- or where he got it. That's the reason we offered it.

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THE COURT: Wait a minute. The jury doesn't know that he was arrested out therein the lounge and all this. The way you careen recklessly around in this case, it seems to me you are making up these things about 30 seconds before you decide to offer them. I don't get this. You want to prove that he was in Switzerland, put his passport records in evidence.

MR. SORKIN: Unfortunately, your Honor, the passport is stamped upon a return. There is no way of showing that the Swiss don't stamp it, that he was in Switzerland. The Swiss quite often, from our conversations with all of these fellows, don't stamp entry.

What is stamped is re-entry into the United States.

MR. GOULD: I have been in Switzerland at least

50 times in my life, I am prepared to testify that I never
entered the airport without getting the passport stamped
by the Swiss border police.

MR. SORKIN: Your Honor, I was trying to get out from Mr. Doonan, avoiding the issue of the arr est --

THE COURT: But look what Doonan says. He blurts it right out before you can say 62 cents.

MR. SORKIN: Your Honor, that is unfortunate.

THE COURT: He is an agent. He works directly for you. You can't blame it on the FBI or the Bureau of

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Narcotics. He works for your office.

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MR. SORKIN: I was trying to get out, your Honor, the fact that he was met at Kennedy Airport as he debarked from a Swissair flight that was --

am quick to sustain the defense objections here, I know from experience, we have been going for 12 days, there are more things that go on with the best of intentions than there aught. I don't know whether you have a death wish for error in this case, but we seem to be careening recklessly on that course since the day we started.

There is a good reason why I dampen you down. I am not doing it out of the pleasure of the event, I will tell you.

MR. SORKIN: I would like the opportunity of developing that with Mr. Doonan, avoiding the arrest. He met Mr.Stoller at the airport, he just came off the plane --

MR. GOULD: You can say he met him at Kennedy
Airport. You can say he met him in the lounge of Swissair,
if you want, or something like that. But Doonan can't say
he saw him getting off a plane unless he saw him getting off
a plane. Then if he wants to testify about that, why don't
you go out and tell him you want him to testify to that,
and I am sure he will.

1hb-3

But the arrest blurted out of Doonan, he is too quick on that stuff. I don't like it. These investigators are very important people in their own view, but that doesn't mean that they are entitled to pull sleezy television tricks like that.

MR. SORKIN: If I can, your Monor, I would like to direct my att ention to 80. 80 makes specific reference to Mr. Allen, payment of a loan to Mr. Allen.

THE COURT: I know, but it is so collateral, it is pitiful.

MR. SORKIN: I think it goes right to the obstruction count, your Honor.

THE COURT: Obstruction?

MR. SORKIN: Yes, the first count of the obstruction indictment charges Mr. Stoller with paying money to Mr. Allen to keep him in Switzerland. Mr. Feeney testified he had conversations with --

THE COURT: You think this is what 80 days?

MR. SORKIN: I think 80 says that, your Honor, and
I think 79 says that.

THE COURT: Let me see them both.

MR. GOULD: You could put Mr. Allen on the stand.
You almost didn't want to do that.

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MR. SORKIN: He is available to the defense, as you well know.

THE COURT: Mr. Sorkin, sufficie it to say here, you may be right that if these things could be explained -- for exampoe, for starters, on 79 and 80, we don't know whose writing is in green, we don't know whose writing is in red. Maybe they are the same, maybe they are different.

MR.SORKIN: With all respects --

THE COURT: Near me out. Second of all, we don't have a date. I don't know, you have all these assumptions you go on, maybe it is more than assumptions, but you haven't proved it to me. I don't know what this means.

MR. SORKIN: Mr. Alenstein, last week, your Honor, indicated that we would get a stipulation that that is Mildred Stoller's handwriting.

THE COURT: I don't care what Alenstein said. I have been hearing more things about Alenstein -- he assumes an importance greater than the dear man probably in his wildest Walter Mitty's' dreams thinks he does.

MR. GOULD: He is really a nice fellow.

always blame everything on poor old Alenstein. You see the point I am making, Mr. Sorkin? There is no stipulation about this. Why do you assume a United States District Court should

lhb-5

roll over and play dead for ambiguities like this? Don't you understand me when I say I listened to this kind of dreary nonsense, I really wonder, are you trying to create error here? I don't get it. I am sure not, but I have had many a day that I wondered about it. The present record doesn't support all this. I can't accept what you tell me as being true. There is nothing in the record to prove it.

What else? Go on A.

MR. SORKIN: With respect to 80A, your Honor, Mr. Gould is certainly right, there are library cards here that have no bearing on it.

THE COURT: And a Social Security card?

MR. SORKIN: I think carrying the cards of Alfred

P. Herbert and Ernest Ballmer, I think that is all so cir
cumstantial. It shows a relationship between --

MR. GOULD: I agree, and if I were arrested now, you could prove a relationship between me and the American Express Company and a couple of airlines and the Cornell faculty.

THE COURT: I am not going to allow all that junk in there, because it is ridiculous. One of the five town library cards? Come on.

MR. SORKIN: I am sorry, but we wanted to make the document complete. Mr. Doonan xeroxed everything. 1 see

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Mr. Gould's objection, I understand it. It is perfectly correct. We have no problem with --

THE COURT: Don't blame Mr. Gould. I am raising-MR. SORKIN: I see what your Honor says. You
are absolutely correct --

down to read, one is on one level. Believe me, I am not going to try this case according to the follies of you and Mr. Doonan, I am just not. That is not what I am paid to do here. If there is that, we would let you and Doonan judge this case. That is just ridiculous. You make up your mind. Some of that stuff I agree with you is material. I grant you having the card with old Herbert's name might have some probative value.

MR. SORKIN: I would like to offer the card with respect to the Frank Aubert of the Swiss Bank, Ernest Ballmer

Mr. Feldshuh and for me. The Government is offering this.

You decide whatyou are going to offer. Don't make it a
dumping operation, like you obviously did out here. That is
what they pay the defense counsel to come in to these cases
for.

I am really kind of badly shaken by this kind of stuff. I know it is late in the Government's case and

1hb-7

you are worried whether you have everything in, but that doesn't mean I roll over and play uncle dead. Neither should Mr. Feldshuh or Mr. Gould. That is what these trials are all about. You make up your mind about what you seriously want to offer.

Some of that I agree with you ought to be let in, if you press it.

MR. GOULD: May I take a look at that?

THE COURT: Get him to make up his mind and show you and Mr. Feldshuh what he is really serious about, instead of a bunch of library cards and upside down Social Security cards, and allthat sort of stuff. While you are doing that, what else is the Government offering on this splendid occasion? The Stoller tapes?

MR. SORKIN: Yes, your Honor.

THE COURT: You really want to offer those?

MR. GOULD: Don't discourage him. Really

I don't mind.

THE COURT: I don't blame you.

MR. FELDSHUH: This isbeing offered on Count 1 of the obstruction indictment, I take it it is not offered against Mr. Frank, is that right?

THE COURT: You can't offer the content s of a man's wallet named Stoller against Frank.

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MR. FELDSHUH: I just want that on the record.

MR. SORKIN: That's right.

MR. FELDSHUH: I want Mr. Sorkin to say it.

MR. SORKIN: I have said it.

MR. GOULD: I assume where you put a red checkmark, you want it?

MR. SORKIN: That is correct.

MR. GOULD: Business card of Frank B. Aubert, vice-president of the Swiss Bank, I respectfully suggest has no materiality to anything in this case.

THE COURT: Sustained.

MR. GOULD: The business card of Ernest Ballmer, I couldn't care less. Mr.Stoller I will concede had this business card with him. The business card of one Walter Vaterlaus, attorney of Swiss Bank Corporation, nothing to do with this case, and I object to it.

MR. SORKIN: Your Honor, there has been testimony fromD'Onofrio that after they made the cross in Switzerland, Stoller told him he is going to move his accounts to Swiss Bank. He moved his accounts. There was testimony from Feeney that they had dinner at the Eden au Lac and Stoller said he was going to move his bank account --

about. I agree with you on that. All we know about here

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is he has a business card.

MR. SORKIN: It seems to me at the very least it shows a relationship between Swiss Bank Corporation and Mr. Stoller.

THE COURT: Now I am going to sy mpathize more than I did with Mr. Gould. Let me look at my wallet. I have a calendar from the Pound Ridge Travel Service, Inc. I have been to Pound Ridge because I live right next door, but, you know, on and on we go. Speculation.

MR. GOULD: The same with respect to the business card of Fritz Haueter, sub-manager of the Swiss Bank Corporation, nothing to do with the case.

Then there is the business card of Philip Stoller and Company. No objection. The man carried his own business card.

THE COURT: Plastatours?

MR. GOULD: Plastatours, correct, sir. His automobile -- you don't want the automobile license. Another one of Fritz Haueter. I don't have to argue that. The business card of Alfred P. Herbert. I don't care.

THE COURT: We heard enough about Herbert.

MR. GOULD: Sure, let's take in Herbert. Another business card of Stoller. I guess that's it, isn't it?

THE COURT: There is a marvelous map of Long Island,

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which I am dying to hear about.

MR. GOULD: Let's take a look at that. That just shows where the various Cadillac agencies are located.

I look in vain for a businss card from Cockeyed Jennie.

THE COURT: What about that? Maybe we are missing something.

MR. SORKIN: Maybe we are missing Fleetwood, your Honor.

THE COURT: Also the type is -- there are some legends on here which are to me illegible. But, in any event, just for curiosity, what is the relevance of this?

MR. SORKIN: Your Honor, there is really no relevance. I agree, it was a mistake to attach all the documents. When Mr. Doonan xeroxed it, we put everything together, we didn't excise anything, he put it all in one document, and we are offering those -- we would like to offer those that have reference to Ballmer, Herbert and the Swiss Bank Corporation which we think --

MR. GOUID: The Swiss Bank Corporation, I don't agree --

THE COURT: I sustain the defense. It is true

Feeney mentioned this, but there has been a lot -- I regard

this as quite different than the Alfred Herbert, for example.

I would permit you, although you haven't checked it, to

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jhb-11

put in this marvelous award that he received as a honorary member of theSwiss Air Travel Club, but you haven 't checked that.

MR. SORKIN: No, I don't think we will.

THE COURT: Then I am going to sustain the objections of the defendant Stoller as noted, and you can put in the one about Ballmer, Philip Stoller's travel card --

MR. GOULD: Business card.

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THE COURT: Business card, Alfred Herbert's card with a number on there for -- no, that's wrong. The name

Ballmer is on there and then there is a Long Island area code number. I won't question that. You are going to have to cut these up and only produce those and then show them to Mr. Gould and make absolutely sure.

MR. SORKIN: We will be happy to do that.

that it could be that they would tend to corroborate Feeney, if there was more in the record, but there isn't. You don't have a concession from the inestimable Alenstein who is blamed for everything. Maybe he deserves all this flogging, I don't know, but there is no stipulation bout Mrs.Stoller's signature.

MR. SORKIN: Your Honor, I am sorry to bring it up again, I spoke to Mr. Alenstein in the hall, we met in

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our office where he said he still stipulate that these were the documents we seized from Mr. Stoller. I asked him would he stipulate that that is her handwriting, and if an expert was called to comepare her handwriting, he knows she went in to the grand jury --

THE COURT: He doesn't have to stipulate anything.

MR. SORKIN: He did last week --

THE COURT: That doesn't control the Court. That is like saying my Aunt Minnie came in and said what a bum I was, but that doesn't control anything in this case or prove anything. This sounds like childish nothing.

MR. SORKIN: I take it he is not stipulating that that is her signature, is that correct, Mr. Alenstein?

MR. GOULD: You don't have to question him. You better question me. I am trying the case.

MR. SORKIN: But I didn't see you in the hall, Mr. Gould.

MR. GOULD: I am not stipulating it, and I have the responsibility for defending this gentleman.

MR. SORKIN: With all respect, Mr. Gould, you should have come down to my office to talk about stipulations --

MR. GOULD: I don't propose to get into a slinging match with you about violations of covenants, representations or anything of the sort.

jhb-13

THE COURT: Please don't. You are within your rights not to stipulate, and I support you in that and say nothing more.

I would assume, Mr. Sorkin, you would realize that.

It hasn't been stipulated to, and nobody can compel these

fellows to do that, and Mr. Gould does have the responsibility,

by the bye, as I see it.

MR. SORKIN: I take it if we then prove the handwriting, that would overcome any objections--

MR. GOULD: No, I still stand on materiality and relevance.

whether they were actually delivered. We don't know whether they were delivered. Stoller may have signed that, but that doesn't mean it went to the bank. I have some powers of attorney up on my desk which contain my wife's signature. From time to time I have them so that if I need the power of attorney for her account, instead of having it go out to my home in Westchester, why, we have them.

She allows me to do this. That doesn't mean because she signed it they were delivered and were effectuated.

I am sorry, but I haven't just sprung onto the scene here lately, you know. I don't understand you at all on these arguments because there is nothing to base these

End 3B

documents on.

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MR. SORKIN: Can I get Mr. Edwards now?

THE COURT: Before we do that, don't you think we ought to let our jury hear whatever it is you want them to hear?

I don't want them to sit around any longer than they have.

MR. GOULD: May we go off the record -or a second, your Honor?

(Discussion off the record.)

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(In open court; jury absent.)

MR. SORKIN: Your Honor, can I leave the court to make xerox copies of 106A through O, the pink sheets? I am informed by the National Quotation Bureau that they need the originals back for another matter. Mr. Gould and Mr. Feldshuh have no problem.

MR. GOULD: I wouldn't mind if they were returned. I can't imagine any occasion for you to need them here. Why don't you just return them. If we need them, we will get them back.

> MR. FELDSHUSH: I don't need it, sir.

THE COURT: As long as we understand. I am sure the Bureau would agree with us. They will get them back now. If we have to get one or two back to look at, they will always accommodate us.

(Pause.)

THE COURT: Mr. Sorkin, let me place on the record that I will receive 80A as it has been redacted in accordance with the rulings. Also if you are going to have Doonan testify that he picked up this key on such and such a date in theSwissair lounge out at Kenne or airport, I will allow the hotel key in evidence.

MR. SORKIN: He cannot testify it was Swissair. He can testify it was the international arrivals building,

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Swissair flight that came in.

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THE COURT: Wherever it was out at Kennedy. That is all right. But the rest I sustain the defense's position on. In other words, 76 through 80, I see no basis in the record to support those. 80A as redcated and 80B with an explanation of some plausibility, I will admit those.

MR. SORKIN: I am informed Mr. Doonan did not seize the key from the airport. He took it from Mr.

Stoller when he got back to the courthouse after the arrest. He had it on his possession. He didn't take it from him until we got back to the courthouse. I don't want to say we get into the problem of seizure or he arrested Mr. Stoller. If I could say he met him at the airport and they came back to the courthouse and then obtained the key from him, I think that may solve our problem.

THE COURT: I gather the defense --where is Mr. Gould?

MR. GOULD: I am here.

THE COURT: You don't want any references made to the arrest, isn't that right?

MR. GOULD: Yes, that is right. I don't want any references made to the arrest in this stage of the case.

THE COURT: All right. We will allow Mr. Sorkin to fashion his questions to avoid that.

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Doonan-direct

All right. Are we ready electronically and otherwise for this material?

MR. FELDSHUH: Before the jury comes in, this tape is being offered on Count 2, I believe, of the obstruction indicatent. Since it is a somewhat dramatic episode, I would respectfully request your Honor to indicate to the jury that it is not being offered against the defendant Frank.

THE COURT: That is right. In fact, we don't even have the transcript in evidence formally yet, so far as the jury knows.

I will certainly make it clear this is only being received as to the defendant Stoller. Rest assured about that.

MR. FELDSHUH: Thank you, sir.

THE COURT: Let's have the jury in.

MR. SORKIN: This is also being offered, your Monor, not only as to Count 2 of the second indictment, but also as evidence of consciousness of guilt --

THE COURT: I would agree with you. The only point
I was trying to make was to respond to Mr. Feldshuh.

(Jury present.)

(Government Exhibit 80A for identification was received in evidence.)

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Honor.

THOMAS PATRCIK DOONAN resumed.

DIRECT EXAMINATION (continued)

BY MR. SORKIN:

Q Mr. Doonan, let me show you once again Government Exhibit 80B. Did you obtain that from Mr.Stoller's person on November 21, 1973?

A Yes.

Q Did you meet Mr.Stoller on November 21, 1973, at the international arrivals building at Kennedy Airport?

A Yes.

Did a certain flight come in?

MR. GOULD: I object to that, your Honor.

a problem for perfectly understandable reasons, and 1 don't mean to critize either you or the witness. How could he have knowledge? You see, that is the tenor of the objection. I am inclined to think it may have some merit.

Q Did you arrive at the airport, Mr. Doonan, when a flight, an international flight, arrived at the international arrivals building at approximately --

MR. GOULD: That is objected to, your Honor.

THE COURT: Yes.

MR. SORKIN: I would like to lead if I can, your

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Doonan-Cirect

THE COURT: I understand the problem. I am not critizing you for that reason. That is why I made the point I made.

Again, it presupposes something that I am not sure is fair to the witness to presuppose. If you want to ask him if he had certain information as to an arrival, that would be something different.

- Q Mr. Doonan, did you have certain information with respect to an arrival of an international flight?
 - A Yes, I did.
 - O From where?
- A We went to Swissair Lines, the ticket agency window in the international building. We asked them if there was a Mr.Stoller --

THE COURT: No.

- Q Did you have information?
- A Yes.
- O All right.

THE COURT: You had information from Swissair?

THE WITNESS: Yes.

THE COURT: As the result of your inquiry, all right.

Next question.

Q Did you obtain information as to where the passenger.

frm that Swissair flight would be entering into the Castoms

1	gab-6	Doonan-direct
2	area?	
3	A	Yes.
4	. Q	Did you observe passengers coming from the Bureau
5	of Immigra	tion, Passport Section, into the Customs area?
6	A	Yes.
7	Q	Did you see Mr.Stoller come in?
8	A	Yes.
9	Q	Did you meet Mr. Stoller?
10	Α	Yes.
. 11	Q	Did you then accompany Mr.Stoller to this court-
12	house?	
13	A	Yes.
14	ð	Did you obtain from Mr.Stoller's person Government
15	Exhibit 80	B?
16	A	Yes.
17	Q	On November 21?
18	A	Yes.
19		MR. SORKIN: Your Honor, we offer 80B again.
20		MR. GOULD: Same objection.
21		THE COURT: I am going to overrule that objection
22	and allow	it on the theory argued by the United States
23	Attorney i	n the recess here. 80B will be received. I am
24	changing m	y ruling as a result of what I heard.
25		(Government Exhibit 80B for identification

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Doonan-direct

was received in evidence.)

MR. SORKIN: Ladies and gentlemen, this is a key from the Hotel Nova Park --

MR. GOULD: I object to it, your Honor. I think he can circulate the key and they can judge for themselves what it is.

THE COURT: You are going to have to do a little removing of the sticky paper.

(Pause.)

Q Mr. Doonan, let me show you 80A. I ask you, please, if that is an exact c-py of certain documents that were seized from Mr.Stoller's possession --

MR. GOULD: If your Honor please, we have been through this and your Honor has given counsel a specific direction as to how this should be done.

THE COURT: Right. We don't have to do that. The jury heard Mr. Doonan say this already.

MR. SORKIN: We offer --

THE COURT: You were going to redact certain things from that. When you do that, I have already promised you that upon argument I will tell the jury that certain portions of this will be received. You know those portions.

MR. SORKIN: Very well. I will redact them.

Q Mr. Doonan, let me show you what we will now

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It has previously been marked, but the tag has

come off.

mark as 101A.

THE COURT: In other words, this is 101A for identification. The tag is off.

MR. SORKIN: That is correct, your Honor.

Your Honor, at this time we offer 101A in evidence.

THE COURT: For reasons which counsel are already aware of, but the jury is not, I have indicated that 101A will be received in evidence.

(Government Exhibit 101A for identification was received in evidence.)

MR. SORKIN: We offer, your Honor, 102B.

MR. GOULD: What is that one, Mr. Sorkin?

MR. SORKIN: That is the next conversation.

(Pause.)

THE COURT: 101A is the one 8:40 in the evening and 102B is the one about 9:15?

MR. SORKIN: That is correct, your Honor.

THE COURT: 102B received.

(Government Exhibit 102B for identification was received in evidence.)

1	qwrf 4b pm 1 Doonan-direct 2026		
2	Q Mr. Doonan, would you look at 101-A, please.		
3	I ask you if you can tell us what it is?		
4	Λ Yes.		
5	O What is it, please?		
6	A This is a transcript of a telephone conversation		
7	between Jerome Allen and Philip Stoller which was had on		
8	March 6, 1974 at approximately 8:40 p.m.		
9	O Do you have, Mr. Doonan, in your possession the		
10	tape of that telephone conversation?		
11	A I do. It is right there.		
12	MR. SORKIN: Your Honor, at this time we offer		
13	102 in evidence.		
14	THE COURT: What about 101?		
15	MR. SORKIN: Your Honor, that relates to another		
16	document.		
17	THE COURT: First of all, do you have the tape		
18	MR. SORKIN: Yes.		
19	THE COURT: that underlies the 8:40 p.m.		
20	conversation?		
21	MR. SORKIN: Yes, that is 102, your Honor.		
22	THE COURT: That is 102, all right.		
23	O Mr. Doonan, does that also underlie the tape of		
24	102-B?		
25	A The other transcript?		

SCUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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so there is no confusion because Xerox transcripts tend to look alike.

MR. SORKIN: Yes, your Honor.

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(Pause.)

THE COURT: While these are being passed out, Mrs. DeBartola and ladies and gentlemen, I should say that these tapes and the transcripts based on those tapes are being received by the Court only in respect to the Defendant Philip Stoller. You should consider they have nothing to do with the Detendant Frank at all.

MR. SORKIN: Your Honor, I'm now passing out 102-B, which is the 9:15 conversation.

(Pause.)

THE COURT: Mr. Gould, would you like from the Court an aid memoir instruction with respect to the tapes on the one hand, considered and compared with the transcript prepared by Doonan?

MR. GOULD: I anticipated your Honor would do it.

THE COURT: I just wanted to make sure before I did.

MR. GOULD: Thank you very much, your Honor.

THE COURT: One other instruction in regard to these particular exhibits, ladies and gentlemen. The basic evidence for your consideration are the tapes themselves as you will hear them played over a recording

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device in a moment.

The transcripts which you have in your hand you should regard as an aid memoir, that is to say, as a guide to your listening. If you see a difference in the transcript as compared with what you actually overhear, you are entitled to and indeed you should receive what you hear as being controlling.

THE COURT: Can we let Mr. Doonan step down? MR. SORKIN: I would like to, your Honor. He has to operate this.

(Pause.)

MR. SORKIN: Your Honor, we would ask the Court to instruct the jury that at one or maybe more points in here for certain legal reasons Mr. Doonan will have to stop the tape, move it ahead, and we would ask your Honor to instruct the jury to disregard that fact.

THE COURT: Put differently, ladies and gentlemen, there are certain portions which, by agreement of counsel and/or by order of the Court, have been deemed irrelevant for our purposes. That means that Mr. Doonan as the operator will have to stop the tape at those points. So don't be misled or put off by that.

(Government's Exhibits 101-A and 102-B played to the jury.)

...

THE COURT: Do I understand, Mr. Sorkin, that save for the redacted version of 80-A and perhaps that one other strand of evidence which you and Mr. Edwards will be heard about tonight, the Government rests?

MR. GOULD: If your Honor please, we still have the business with the vouchers. For that we would have to bring D'Onofrio back.

MR. SORKIN: He is available, your Honor.

THE COURT: That isn't what the Government wants to offer. You want to offer that.

MR. GOULD: It is cross examination, your Honor.

You remember when we let him go, it was with the understanding we could call him back --

THE COURT: I agree. It doesn't mean necessarily it has to be for cross examination. If you want cross examination, we will have it. I will say subject to that.

MR. GOULD: All right.

MR. SORKIN: What I would like to do, your Honor, with the Court's permission — we have no further witnesses here tonight. I would like the opportunity in light of what appears to be a bit of a rush day to consider our Government case tonight and we will have an answer for your Honor at 9:30 tomorrow morning as to whether we rest or not.

THE COURT: In other words, you want me to have the jury come back tomorrow morning in case you have something additional?

MR. SORKIN: I realize now you would have to send the jury home.

May I just have five minutes, your Honor, to talk to Mr. Flannery? I think we can give you a decision tonight.

THE COURT: I would think so because I don't want to have the jury come back and sit around while we have all the technical problems to take up at the end of the Government's case.

MR. SORKIN: I agree.

THE COURT: Ladies and gentlemen, rather than sit here, may I suggest that we take a brief recess so that we can resolve this and then we will let you know what is going to happen here.

(Jury absent.)

(In the robing room.)

(Present: John Day Edwards, Assistant United States Attorney.)

THE COURT: Let me just say preliminarily,

Mr. Edwards, so you get, I hope, an idea of what is

concerning me, as you know, last week we had offered in

this case two sets of overhears, if you will. One

respecting a man named Philip Stoller whose overhears were

just played to the jury.

There was a separate couple of overhears, most importantly one based on a Kel transmitter setup put on Jerome Allen, a cooperating defendant at the time, who went into the office of the Defendant Martin Frank. It is on that subject that we heard testimony from Mr. Doonan as to a conference in your office, et cetera, et cetera.

I ruled against the Government on a Massiah basis, for the reasons I tried to extricate from the record. I checked the record and there are some rather gross typos or perhaps I wasn't enunciating clearly, but I can well understand now that I see that much of it that maybe you were confused by that. But what I am trying to come down to is today I received after great preparations from Mr. Sorkin who alerted me to the fact that we were going to get additional information in the form of affidavits

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or briefs from you and from him, and I read your affidavit and I am frank to say that I am taken aback because everything you say I had more or less understood from the testimony of Mr. Doonan and the arguments of Mr. Ira B. Sorkin. Sorkin put in an additional affidavit with a lot of material that he heard from various sources, mostly Jerome Allen, which in scatological detail might have been something new but in substance I regarded as not new at all.

So I am a little at a loss, for better or worse, I understood you the first time.

MR. EDWARDS: Your Honor, in that event, we were not entirely sure that your Honor had --

I will repeat. What happened here has happened many a time in my experience as a projecutor, and it will happen again. A co-defendant, whether he is a lawyer or not, who is not cooperating, tries to get another defendant, who may or may not be cooperating with the United States Attorney to submit an affidavit which I will assume, for argument, at the very least -- I might go further and say that I have heard certain testimony in this case and maybe I could say more than that, but for purposes of argument, I will assume that affidavit is pure

balderdash -- to me, this is such a common variety problem, that the notion of having a person such as Jerome Allen go in with a Kel transmitter to pick up any testimony, even with a limiting instruction, is just of no force and effect whatsoever, because if there is an obstruction of justice it is pretty much out in the open anyhow.

If there is no obstruction of justice because the affidavit hasn't been signed, why, then, the affidavit isn't signed and that's the end of it.

So the notion of expecting that you wouldn't have any spillover by instructing Allen, though I am sure it was intended in good faith, it is of such vicarious effect that I consider it tantamount to nothing.

You see what I am trying to say? In other words, it jeopardizes the Government's case right there.

MR. EDWARDS: I think I can respond, however, on this, and let me begin by saying that the crime under Title 18 Section 1503 is committed when he attempts to secure from Allen a fraudulent and perjurous affidavit. Every piece of information I had, your Honor, was to the effect that that is precisely what occurred.

THE COURT: Excepting that, that is just my point.

MR. EDWARDS: The next move is, of course, what
is it that we should then proceed to do. The legal

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authorities, to my mind, and I think this is something that is just not even subject for controversy as far as I know, the legal authorities say that where you have evidence of this independent crime, in this case a violation of Title 18 Section 1503, you are certainly entitled to proceed to investigate that particular offense. The only practical way of effectively investigating it was to provide this man Allen with a wire, because obviously Allen's unaided testimony is something which I would suppose we would all concede -- there were questions concerning its value. This is the thing I proceeded to do.

Of course, I knew, your Honor, and I made this very clear in my affidavit because I didn't want anyone to be under any misapprehension here, we are not attacking the genuineness of this matter at all. I knew, of course, when I sent Allen out with the recorder, that if he obtained any evidence at all on the Title 18 Section 1503, it was certain to have a relevance to the case pending before your Honor, the securities fraud case, because, after all, evidence of obstruction of justice is always evidence of consciousness of guilt, if nothing more. Furthermore, I knew, of course, from the very terms of the fraudulent or what I had cause to consider a fraudulent affidavit, the very terms of the affidavit

were such that obviously if any evidence was obtained
through this conversation, there was apt to be particular
relevance to particular issues in the case pending
before your Honor.

I knew all this. However, I knew that the law entitled us to investigate a 1503 charge, and I knew that therefore the only legal issue in the entire situation was, in addition to being able to put in this evidence on a trial, on a charge of violating 1503, would we also be entitled to put it in on the underlying charge itself?

There it was, it seemed to me, a legitimate legal question under Massiah. In the Massiah case, as I read it, and this is merely the reading that we came to after reviewing the law --

THE COURT: I am sure you did.

MR. EDWARDS: The reading we came to was in Massiah you seemed to have the situation where after indicting someone --

THE COURT: This isn't Massiah.

MR. EDWARDS: Then if it isn't Massiah, I fear there continues to be some kind of failure of communication because it seems crystal clear to me that it is a separate matter of obstruction of justice.

THE COURT: That is where I disagree. Let's take your analysis, which I am happy to take. You admit that once somebody makes an effort to get somebody to sign a false affidavit, in the context like this, this is an obstruction of justice, is that right?

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MR. EDWARDS: Yes.

THE COURT: That's what I mean. This happens frequently. It happened to me when I was on the fourth floor. What it seems to me is that if this is so, then arming a man to go in to talk to this fellow who is trying to get this perjurous affidavit for his benefit really becomes a very difficult problem.

First of all, the offense technically is complete once he makes the attempt to begin with. Therefore, any overhear, particularly in the hands of somebody like Allen, who didn't really seem, listening to that tape, to have held it to the affidavit at all, but passing that, even if he tried, you just don't get anything but a discussion of the underlying separate counts which were already the subject of the indictment filed in February.

MR. EDWARDS: Your Honor, the thing that we obtained and the thing that we assumed we would obtain was crystal clear proof of a violation of Title 18,

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Section 1503.

THE COURT: If Allen were to be believed, you already had that proof.

MR. EDWARDS: I know, your Honor, but, after all, if someone comes to you and says, "X has committed a crime," my reaction is, as I hope a prudent prosecutor, well, how are we going to prove it. If it develops that the man who comes to me with this information has an opportunity to converse with the man again, I am entitled to proceed and secure that evidence, which is precisely the thing we did.

THE COURT: That's fine. But that again doesn't answer our problem. I am not criticizing you or anybody else who has this done. But don't ask a Court to accept it into evidence willy nilly because you made a sound prosecutorial decision.

MR. EDWARDS: Of course not, your Honor, however, once one comes to the conclusion, as I submit it is really almost a necessary conclusion here, that it was perfectly proper to proceed to obtain that evidence --

THE COURT: I am not accusing you of impropriety in making the ruling I made. I tried to say that.

MR. EDWARDS: I know that, Judge.

THE COURT: To me this doesn't get to the jugular

point is that if you listen to this tape, it might in your eyes quite properly corroborate what Allen said.

Fine. That doesn't mean it is admissible, because I can see no permissible possible rational way to instruct the jury on this point because of the spillover effect, because Frank spends all of his time talking about really what was going on.

As to the affidavit, if you will hear me out, he keeps saying, "Well, if you want to change it, Allen, change it."

So I find myself drawing totally different conclusions from all the things you and I apparently agree on factually.

MR. EDWARDS: I am simply trying to take it further along. If you concede that it was perfectly proper for us to obtain that evidence and to offer it in evidence on an indictment charging him under Title 18, Section 1503 --

proper from a prosecutorial or police point of view to get evidence to verify a fellow like Jerome Allen. I said quite a different thing beyond that. I said that doesn't mean this Court willy nilly, through that, must admit the evidence in this trial.

MR. EDWARDS: No, your Honor, but I am turning to two separate questions on the admissibility of evidence. What I am saying is that on the obstruction of justice charge itself, I am contending that there really can be no legal issue as to the admissibility of the evidence on that charge since the evidence was properly obtained and directly relevant to that charge.

THE COURT: That's what I just said. We don't agree on that at all. We just don't agree.

MR. EDWARDS: It seems to me that the Massiah opinion itself carves out this evidence and I say --

THE COURT: I agree, generally speaking it

does. But, again, that is not my point. I am concerned

with what I considered the unique evidence of this case.

do not believe that you just willy nilly construe every

case that's been uttered, particularly in our system

in recent years, as controlling every other case. There

is too much difference to be found.

Massiah isn't this case. The exceptions to Massiah that have been carved out I quite agree with. Upon analysis, those exception cases don't to me support the result you seek here, because you have agreed with me, A, once Allen was approached by this man Frank to sign a perjurous affidavit, that completes the offense.

MR. EDWARDS: True.

THE COURT: All right.

MR. EDWARDS: I was securing evidence to confirm the commission of that crime.

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THE COURT: I would agree that you are entitled to confirm Allen, but that doesn't mean that the use of a Kel transmitter in these peculiar circumstances supports the admission of the overhear on the --

MR. EDWARDS: May I try and approach it along this line, and I appreciate your patience in hearing this because I know you have been listening to a lot of colloquy here. If there had never been any consolidation of these two cases and we were simply proceeding to trial on Title 18 Section 1503 alone, it is my submission that the law is crystal clear that the tape would have to come in.

THE COURT: I know, but I am not the one who consolidated these indictments. You moved to consolidate. They consented.

MR. EDWARDS: That is what I now want to turn to, because to me that is the nub of the whole thing, and that is why, although I will admit apparently there are no new facts here, at least --

THE COURT: You claim that's a waiver on their

part?

MR. EDWARDS: Not precisely, your Honor. Here is what I am saying on that, and I believe the authorities we filed support me on this. You have the following situation: When they were in -- I am not arguing it is a waiver in that your Honor should now necessarily --

THE COURT: Do you want to move to sever those counts?

MR. EDWARDS: I believe it is up to the attorney for Frank to move to sever the 1503 count, and may I explain why? If he desires to keep this out of evidence --

THE COURT: That allows him to control the whole show.

MR. EDWARDS: It allows us to try a case that we are entitled to try, and the thing I am terribly concerned about now is --

THE COURT: Wait a minute, wait a minute.

This soulds like gamesmanship. You can't mean that.

If you allowed it up to him, obviously he is going to say,

"I consented to the consolidation and here we are."

MR. EDWARDS:: Your Honor, may I --

THE COURT: I don't blame them.

MR. EDWARDS: May I make myself clear on this,

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your Honor? I think we now come to the nub of the entire thing which is the effect -- the consideration your Honor should give we believe to the manner in which the consolidation occurred.

THE COURT: I am aware of it. I was there.

MR. EDWARDS: I know your Honor is aware of
the facts. I am simply trying to argue to your Honor the
effect your Honor should give that as a matter of law.

As a matter of law -- also it is a matter, it seems to
me, of very compelling equities in this situation. You
have two separate charges. The tape is unquestionably
admissible under 1503 if the case is tried separately.

There is a legal issue as to whether it is admissible
under Massiah in the other case. We moved to consolidate
at a time when the defendants and their attorneys are
in possession of the tape so that when they are considering
whether to consent or oppose it, they are aware of
the following indisputable things:

Number one, that at this joint trial, if it occurs, these tapes are going to be offered in evidence, they had to be offered in evidence in order to prove a case under 1503 at all; and, number two --

THE COURT: Don't say that. You have already admitted that technically you didn't need the tapes to

prove --

MR. EDWARDS: Your Honor, I am not proposing to put in a case on the uncorroborated testimony of Mr. Allen.

THE COURT: That is your judgment. I am pressing a separate point.

MR. EDWARDS: I know, your Honor. What I am saying is, I am really talking to the equity here as well as the law because I think the citations in our memo support me.

THE COURT: The citations in your memo have no case like this, and circumstance alter cases, in my experience.

MR. EDWARDS: I am surely with you on that,
your Honor, and -- may I move under the circumstances
which I feel in this particular case call for a solution
along the lines we are arguing for -- you have a situation
here where defense counsel as a practical matter were as
on notice as anyone has ever been when the motion to
consolidate was made that that tape was going to be
offered at the consolidated trial.

MR. GOULD: I don't agree with that one bit, I will tell you.

THE COURT: Just a moment. We are holding

up the jury here. Get to the point. What is it you are going to say?

MR. EDWARDS: What I am trying to say is, what I believe I set forth here is, they were on notice of two things at that time.

First, that the tape would be offered, and, next, that at the very least the tape was admissible into evidence on the issue of Title 18, Section 1503 Count.

Therefore, in saying that they had no objection to joinder, they were themselves creating, and they knew in advance that they were creating, the situation which now exists.

The most they can hope for after consenting to a consolidation was that they were going to be confronted with a situation where they would win on the Massiah issue, on the SEC counts, and there would be a ruling the evidence couldn't come in on those counts, however, it is plainly admissible, as everyone knew in advance, on the Title 18 Section 1503 counts.

THE COURT: No, wait just a minute. That is assuming an awful lot. If I were a prosecutor, I'd never live that dangerously. The Government moved to consolidate.

MR. EDWARDS: Yes, your Honor.

THE COURT: So what your argument comes down

might not go in.

MR. EDWARDS: I don't think, your Honor, that

to is you were willing to gamble that this might or

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MR. EDWARDS: I don't think, your Honor, that really that is -- if I may say so -- the fairest way to look at the thing because -- the reason I say that, your Honor, is this. The normal proposition of law which I now as well as anyone varies according to particular cases, I concede that.

However, the normal proposition of law is if you are on trial facing two counts and there is evidence that is clearly admissible on one and the Court rules it is not admissible on the other, the normal situation you are confronted with is it comes in on one count and not on the other.

The Court explains it all to the jury.

THE COURT: But here the spillover is serious.

MR. EDWARDS: Your Honor, they knew that in advance.

THE COURT: That is the gamesmanship theory. May

I interrupt you for something else? We are holding up

this poor jury.

MR. GOULD: If I can get one word in here -THE COURT: Mr. Edwards, that overhear drips
with culpability on the part of Martin Frank as to the

count in which he is named in the basic indictment,
in my opinion. It drips with culpability. Now, I do not
concede, and I am not bashful about my ability to communicate
with jurors, I am vain about that, probably, but even
in my most vain, glorious moments do I see any way of
extricating the spot in which we find ourselves. I am

MR. EDWARDS: No, no, your Honor.

sorry, but it isn't as imple as you make it out.

THE COURT: Second of all, I don't like this gamesmanship theory of prosecuting cases. Third of all, I don't get excieted because I have been through it myself directly of thinking that because a man like Martin Frank puts up some cockamamie affidavit filled with lies that that is really a very serious problem of obstruction, particularly when the so-called affiant, in this case Jerome Allen, is in the custody and control of the prosecutor's office.

So if you want to talk about equities, none of this impresses me much. Would you tell the jury to return tomorrow at 9:30, and we will pick up at that time tomorrow. You see the points I am trying to make, Mr. Edwards?

MR. EDWARDS: I do, your Honor.

THE COURT: None of the cases, and I am not blaming your office for this, none of the cases to me remotely touch upon the problems I see here.

MR. EDWARDS: Your Honor, may I respond?

Again thanking you for your patience, here is the way we have to look at it, and I would hope to persuade your Honor of this.

Insofar as the commonness of the conduct is concerned in which Frank was engaging, I don't think it is as common as all that, but, in any event --

THE COURT: It doesn't happen every day, but it happened.

MR. EDWARDS: I have taken the position where the fact of the matter is that the City of New York in my judgment and experience is filled with corrupt attorneys, there are lots of them. The problem that we have is that in our view, the prosecution of a corrupt attorney is like the prosectuion of a mafia chief or a lieutenant --

THE COURT: Please, don't lecture me on that.

I know about that.

MR. EDWARDS: What I am saying, your Honor, is that when somebody comes to me with evidence that such a case exists and that this attempt has been made and is continuing to be made, I feel we must proceed.

THE COURT: I agreed with you. This was sound prosecutorial technique. That doesn't mean the Court is bound to let it in.

MR. EDWARDS: I know that, your Honor, but what I am saying is that the case having been perfectly properly investigated and a grand jury having votel to indict this man Martin Frank --

THE COURT: Please.

MR. EDWARDS: Your Honor, I am not speaking for the newspapers, I am trying to explain to you seriously --

THE COURT: This doesn't persuade me.

MR. EDWARDS: Let me give it a try. The man has been indicted, he is awaiting trial for obstruction of justice. We should be entitled to try him on that charge, unless something has happened that for some reason or other we are totally at fault. I really do not think --

THE COURT: This isn't a negligence game or a fault game we are playing. What I am saying to you is you have every right to do what you did, if you thought it was important, and I can see why. I have dealt with Mr. Allen. Believe me, I can understand you for that reason alone. But that doesn't bind the Court.

MR. EDWARDS: I know that. But what I am saying

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THE COURT: I don't think you should have assumed that it would.

MR. EDWARDS: What I am saying with respect is that I think it should be the aim of the Court, if I may say so, to avoid a situation in which we are prevented from bringing to trial this perfectly valid case of obstruction of justice.

THE COURT: Then let me make another point to you. I don't like to put my personal views on a matter out on the line to make a ruling against you or any other lawyer, but, frankly, when I saw that motion to consolidate these two indictments, the first thing I thought was what in the world are these boobs doing? They are running right into a problem.

I didn't think of the tapes because I didn't know anything about them, but you immediately but yourself in jeopardy when you tried to put in, along with a basic indictment, an indictment based on obstruction which stems from events after the indictment in chief. You always run a risk when you do that. I was trained that way when I worked in the same office you are now head of.

MR. EDWARDS: Your Honor, I am --

THE COURT: To think that somehow the defense

2 is bound by that boggles my mind.

MR. EDWARDS: Your Honor, it seems to me that where the defense is on notice that this is going to be offered at a joint trial, we might as well have told them in a bill of particulars, we couldn't have made it more clear --

THE COURT: I agree they probably knew you probably would introduce this. But if a piece of evidence had floated down from heaven to these lawyers, then they grab it.

MR. EDWARDS: Your Monor, may I close by saying that I think that is a fair and pertinent way of putting it, except that there is, it seems to me, a satisfactory answer from our point of view, and that is that, after all, and I have to ask for your patience on this one because I don't -- I am going to arouse your impatience, but they failed to oppose the joinder. They know the evidence is going to be offered. They know the general proposition of law is that if evidence is relevant on the count and not on the other it is going to come in on the one count with a cautionary instruction. They see all this with their eyes open. After having not opposed the joinder as prejudicial, having not opposed it as prejudicial, the only way within the relevant legal principle that they

can argue against putting in this evidence on the obstruction count and having a cautionary instruction on the rest, the only way they can argue against it is to say now that the joinder is prejudicial. That is the only way they can cast their argument that makes any sense.

They have to say, "We knew what was coming, we failed to object to the joinder on the grounds of prejudice, now we say it was prejudicial."

The gamesmanship there is not the dog in the manger approach here, and I don't mean any disrespect on this, they are extremely clever lawyers and I respect their ability and integrity. But dog in the manger tactics here are really on that side rather than on our side.

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THE COURT: I don't blame you, as a practical matter. I see your point as a practical matter quite clearly.

understand it puts the heavy burden on the prosecution to prove their cases. I didn't invent that and neither did you. Therefore, it seems to me once you made that motion to consolidate, which I assume was made in good faith because you wanted a consolidation, you had the heavy burden of expecting that they would oppose it or they wouldn't oppose it.

But you put the Court in an impossible position because the Court hasn't listened to any of these tapes.

I didn't know what the Government was going to offer and what the Government was not going to offer.

My burden is, subject to review and hindsight with the most refined powerful glasses in search of error of the most minute kind, I find myself in a position where I am right in the middle.

My duty is to assure a defendant of a fair trial, and that means clamping down on the prosecution. You are putting this Court in a position where you are saying, "Well, Judge, we did this because we thought it was up to the defendant to scream prejudice or not."

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You are asking me to assume an awful lot as a representative of the Court.

MR. EDWARDS: I am sorry, your Honor. don't conceive of this as a situation where we have, let us say, played high risk tactics or dog in the manger and then asked your Honor to bail us out.

THE COURT: I would think any prosecutor with less experience than yours would know that this presents You know that appellate courts and trial a problem. courts are very chary of spill-over effects.

You also know that different spill-overs are not the same. Therefore, you know and you have agreed with me that each case has to be assessed to a significant degree on its own facts. I am frank to say, when I first heard about this, I didn't even think of Massiah. I was thinking of United States versus Bonano principle. Was it audible, were there any denials of due process of law in obtaining these? The usual problems. I wasn't thinking of Massiah. I think this is asking an awful lot.

If your theory is, well, it was up to the defense to object, if not, they have waived, this puts the Court in the position where it is damned if it does and damned if it does not, subject to the most picky review in any civilized society on this globe, and it is not ever put

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usually in the posture of the Government erring, it is the Trial Court who always errs. These are the facts of life.

I have to live with them. I am not complaining about it, except to point out to you that I think this is a very chancy way of behaving.

MR. EDWARDS: Your Honor, first, I do not think that this is a case -- and I know that such cases are conceivable -- I don't think this is the case where we have taken risks and are now asking the Court to bail us out of our errors.

THE COURT: May I say there was one small risk, at least -- I disagree with you -- when you moved to consolidate.

MR. EDWARDS: What I am saying here is this. I don't think the Court in fact, as we see this case, is being put in any difficult position at all because it seems to me that in view of the fact --

THE COURT: I will explain it to you. One,
I didn't move or suggest that you move to consolidate.

- (2), I didn't know what the Government was going to offer;
- (3), I didn't know once you made a motion like this what the defense would do. So there are three good

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reasons.

MR. EDWARDS: I know, your Honor.

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THE COURT: You are putting the Court in a position where it had no knowledge, it was bound to go along with the tide, and there we are.

MR. EDWARDS: It seems to me, your Honor, that THE COURT: I think the Government has a higher
burden than just going along hoping this will slide through
with no problem.

MR. EDWARDS: Your Honor, what I am saying, I guess, is this: This is one of those situations where you move for a joinder and the defense is on notice as to what it is that is going to be offered, and really, it is up to them then to say that the joinder is prejudicial or it is not prejudicial.

making in the criminal area, I would be inclined to agree with you. But I don't think I am. I think I have to live with quite a different set of emphases than that.

MR. EDWARDS: I would make this submission, however, your Honor, and I realize, of course, that at the appellate level it is another court, of course, that makes the law --

THE COURT: Why does the Government run this kind of a risk?

MR. EDWARDS: I would contend that in reality it was the defendants who ran the risk. In any event, apologizing for any difficulties that have been created, I say that since we have a 1503 case which we are entitled to try, and I say it is an important case, the problem can be solved very simply indeed, and there couldn't possibly be any legal error involved --

THE COURT: I wish you wouldn't press that.

I am still smoldering. Some years ago when you were an

Assistant in this office, the Government lectured me

similarly in another case, and I went through the torments

of the damned and a very difficult trial with pretrial hearings

of an evidentiary nature, post-trial hearings, contentions

of all kinds. Finally the day came when the man's sentence

was imposed.

P.S. One year later, who comes back supporting a motion for a reduction? None other than the Assistant Attorney General of the United States in charge of the criminal division then and today saying, "Oh, now, your Honor, things are different. He is cooperating. We couldn't care about the U. S.Attorney's office's thoughts about corrupt attorneys in New York. We want you to reduce the

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sentence."

MR. EDWARDS: This is a new one on me.

THE COURT: I know it is. I am telling you that I don't like lectures about doing my duty to avoid corruption.

MR. EDWARDS: I am not trying to lecture your Honor at all.

THE COURT: I know you weren't, but you are touching a sensitive nerve. I have never forgiven your office and Henry Peterson for that one.

If you want the name of the case, I will give it to you.

MR. EDWARDS: Perhaps later, your Honor.

Judge, I am not trying to lecture the Court at
all --

THE COURT: You started out that way until I nipped you.

MR. EDWARDS: I didn't mean it that way.

THE COURT: I don't think you did. I accept that.

MR. EDWARDS: What I am saying, Judge, is that it seems to me that in view of the principal point I made and am relying on, that they failed to object on the grounds of prejudicial joinder and now they have to argue prejudicial

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joinder to secure the ruling they need, although they
knew the facts at the time --

I think you and I ought to be done. Here is what bothers me in addition to the three factors I mentioned. The fourth factor is, true, they knew about the over-hears. They won't deny that, I am sure.

what the Government's proof would be. The Government has a lot of latitude. Thank God they do. The system is already overburdened with too many nitty-picky rules anyhow, but at least the Government has a fair amount of discretion, and you could always change from one week to the next. The trial is a living, breathing thing, to an extent, although we are doing our best collectively to kill it. We are still having a pretty good time here, going along, and Sorkin makes his decisions for better or for worse, and Gould and Feldshuh make their decisions for better or worse and we have a little life left in us still.

But, I don't see how they can be absolutely certain what the Government was going to do.

MR. EDWARDS: It seems to me, your Honor, that it is all clear enough that we couldn't really prove the 1503 charge without putting in the tape and we were sure

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to offer it.

THE COURT: Supposing they put on Allen. Supposing Allen didn't pull a dying swan act. You know what is going Mow, the people who were threatening his life were you, not you personally, but the Government. listened to Jerome Allen. He is a strange little man. But at the point in time, March 6, February 28 of this year, Allen had been in before me in a room upstairs and plastered on the record is his plea of guilty. He was cooperating. Now, we will pass whether or not he is the greatest cooperator in the world, that is an ugly question and I don't want to remind anybody of it. He is now moving to set aside that plea or looking for a lawyer who will make such a motion for him, I will say that much for him. At the time it may well be that the defense assumed, well, if Allen is going to cooperate and he is going to come in, maybe the Government is not going to fool with this tape.

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MR. EDWARDS: Judge, let me just close by saying this: I would hope, I know your Honor has given this a lot of thought already, I would hope that your Honor might reserve until tomorrow morning with the following question pending. It seems to me that the equities are such in view of the consolidation situation and what everybody knew and should have known at the time, the equities

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are such that the fairest thing to do, and there could be no legal error in it, in my submission, no legal error, is to say to the attorney for Mr.Frank, "It is up to you. You have your choice. Either we will put in the evidence on the count on which it is admissible, Title 18, Secton 1503, and I will give the jury the usual legal instruction on the other counts, or if you make a motion for a mistrial and a severance on the 1503 count, I will grant it and the Government can then proceed to try that as it really should be entitled to proceed to trial on this perfectly valid indictment."

THE COURT: You know what the irony of all this is, I don't think much of the obstruction of justice count at all, simply because if you don't get an affidavit signed, so what. What I do get excited about is, and this is the irony, I make no bones about it in the presence of Mr. Frank's lawyer, that tape to me drips of guilty knowledge, just drips, in respect to the basic indictment charges in which Mr.Frank is named.

MR. EDWARDS: Of course, our argument is, and I would love to have the opportunity to reargue this, but I am not sure your Honor wants me to, my strongest contention is that it ought to come in on the substantive SEC counts.

I don't think that Massiah should be applied to bar this in

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evidence at all.

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is a balancing operation. I believe the vice of your

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position can be succinctly summarized as follows:

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THE COURT: That is where I believe I disagree I don't think -- what it comes down to me

Knowing and conceding as you do that you already had proof of a technical violation of Section 1503, knowing as you do that a man like Allen can't possibly channel a conversation, I mean, that is just asking too much of any person in his shoes, that therefore the only possible thing that could be obtained from the decision to send them in -- him in to talk to Martin Frank could be, so far as usable evidence at the trial, would be evidence bearing on his criminal intend and crimin scienter in the basic indictment.

I read the spirit of Massiah to say you shouldn't do that.

MR. EDWARDS: Your Honor, on that fundamental issue, which we really haven't talked about --

THE COURT: I think we have been talking about it for the last half hour.

MR. EDWARDS: This is the first time, your Honor, that we have directed our attention to the fundamental question of whether in the light of the Massiah opinion

1hb-11

this evidence should be received on the securities fraud case itself.

THE COURT: Speak for yourself. That was what I was focusing on from the very beginning. Last week and today.

MR. EDWARDS: It seems to me that anyway, up to this point I have been emphasizing its admissibility on the Section 1503 obstruction of justice count. As far as its being admissible on the securities fraud count is concerned, it seems to me that Massiah simply should not be excluded to cover a situation where rather than the Government, after indicting somebody gratuitously, so to speak, deciding maybe we can obtain some more evidence on him, let's go out and see if we can, we don't have that.

You have a situation where the defendant is affirmatively coming forward and attempting to interfere with the trial by securing perjurious testimony. When he moves forward to affirmatively do that, it seems to me that the Government in responding is really simply taking what he is volunt tily handing to them rather than going out and soliciting it.

THE COURT: That is what you say. I have understood this all along. All we are doing is repeating ourselves. I didn't mean to trigger new argument because

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I think it is the same argument. I was just trying to summarize for you my differences with you.

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Let's hear from the defense.

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MR. GOULD: I have nothing to add.

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THE COURT: I have been restraining you.

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wanted to argue.

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MR. GOULD: I think it is very obvious that

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what they are arguing is simply that by consenting to the

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consolidation in some way we have raived the right to try the

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THE COURT: That's right.

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MR. GOULD: That is all it comes down to. It is

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sheer nonsense.

be on the --

case.

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THE COURT: His argument is that you knew full well that this would be the problem.

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MR. GOULD: How did we know?

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MR. FELDSHUH: Was there a commitment? As a

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matter of fact, I told Mr. Sorkin the first time I heard

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those tapes I was going to move to suppress.

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MR. GOULD: I represent, your Honor, that when

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the motion was made to consolidate, I did not have any kind of overview of what the Government's case would

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THE COURT: You did know about the tapes?

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MR. GOULD: I knew the tapes existed. I didn't know whether they would use them because in my mind the tapes were of dubious substantive value, from an evidentiary point of view.

However, I do want to make one representation very clear, which apparently escapes the minds of the gentlemen on the side of the prosecution. I had one reason and one reason only for consenting to the consolidation, and that is that the expense of a criminal trial in this place is so staggering, so ruinous to a defendant, that I would never impose on him the obligation of going through two trials. That man is — my man is impoverished by this case, and to say, "Well, let's go ahead, you impoverish yourself on this one, and then if we win this one the Government has another crack at you and you can go borrow more money from your relatives to protect you against these multiple imbeciles," that is all that was in my mind.

MR. EDWARDS: It seems to me --

THE COURT: You have had now exactly 45 minutes.

The last five minutes I will--

MR. GOULD: I have nothing more to say.

MR. FELDSHUH: I have nothing more to say other than the fact that Mr. Sorkin knew the first time I heard the tape that I was going to move to suppress it, and your

1hb-14

comment about the fact that we were just going to stand aside and whistle Dixie waiting for you to maneuver this matter around by certain accusations that you put in your affidavit is just sheer nonsense. We want you to know that we are going to stand up and defend our clients to the best of our ability.

THE COURT: Now, Mr.Edwards, to come back to you you said something about you wanted me to reserve decision until tomorrow morning. What is going to happen tomorrow morning?

MR. EDWARDS: Nothing, your Honor. I guess

THE COURT: You want me to sleep on it? That is fair enough.

MR. EDWARDS: Your Honor is putting that forward as --

THE COURT: That may be a wise suggestion. But that is all that you have in mind?

MR. EDWARDS: Yes.

THE COURT: In essence?

MR. EDWARDS: Yes.

in trying to put together all the cases, and they are difficult, for me, at least, to put together, I recognize

that this Circuit has been in the forefront, and I think
wisely so, of carving out exceptions to Massiah, which
deserve exceptions to be carved out. But, to me I am
troubled by the notion that when you have a technical violation
an obstruction count, it is just too much to ask sending
a man in with a minifon and saying, "Look, don't ask about
anything except this alledgedly perjurious affidavit,"
that anything is going to come out of that except information
which may be more damaging than anything else in respect
to the main charges, that is the original indictment.

MR. EDWARDS: That is one of the main reasons

I wanted to file my affidavit, your Honor, because I wanted
to make perfectlyclear that of course I knew that evidence
on the SEC case was going to be obtained and had to be
obtained.

To me that is not --

Massiah is that once a defendant has come into the case,
has pleaded guilty, he is there with a lawyer, true, I
admit Frank is a lawyer and maybe you could say, "Dope,
he should have known better," I don't think the law says
that, that seems to me at the very least to violate the spirit
of Massiah because you couldn't expect to get anything. I
am sure I am a creature of my own training. I was flatly

instructed on this one today downstairs by my boss. I was furious because the defendant wanted a phony affidavit and he wanted it from a cooperator. Mirabile dictu, the analogy is even more complete because a few weeks before the trial he was convinced the alleged cooperator was a Trojan horse and we threw him out.

But we never worried about -- the affidavit
was just as bad as Frank's. It was full of \$3 bills. No
one would have ever signed it in his ribht mind, unless he
was up to something. But we never would have -- in fact,
I was loaded with zeal, I wanted to go and have recorded
conversations between the wo, and the boss gave me very
good advice. Don't do it. You will only have troubles. The
law was different, I agree, it wasn't quite as clear as
it is now. So I may be bemused by that, but I saw nothing
but trouble the minute you let a quy like Allen go in, and
listening to the tapes convinced me.

He didn't do what you told him to do. Maybe he couldn't.

MR. EDWARDS: Your Honor, what I am saying is, yes, how broad the conversation was after he arrived there really doesn't matter.

THE COURT: What I can do about charging that jury, I can say, "Oh, sure, pay no attention to it on the

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2	other counts," but, my word, I don't usually get excited,					
3	juries do follow the Judge much closer than the law presumes					
4	they do, but here I don't see it.					
5	I will reserve until the morning.					
6	MR. GOULD: Are we to understand that the					
7	Government rests subject only to					
8	THE COURT: I hope we can have an understanding.					
9	MR. GOULD: I don't know. I have to get wit-					
10	nesses.					
11	MR. SORKIN: Your Honor, I really don't want					
12	to press it any more, but I would like the opportunity, since					
13	the jury is already coming back					
14	THE COURT: It costs the Government a lot of					
15	money, but nobody ever thinks of it except the Judge and					
16	then he is clamed for it.					
17	MR. SORKIN: I would ask the Court's indulgence					
18	to give us					
19	THE COURT: What might we hear from?					
20	MR. SORKIN: Your Honor, I don't know what					
21	we might hear. I would like the opportunity, and I					
22	think it is my responsibility to the Government and the office					
23	to make sure I have proven					
24	THE COURT: I will support you on that, but I want					
25	a decision in the morning. There are various reasons why.					

they will be the first of the second of

The jury has been very patient with us. There are various reasons why we can't have them sitting around tomorrow. We have to hear motions. The defense has to get information so they can put on a case. I am not blaming you for all this, but I think it is time we know.

MR. GOULD: Should we get witnesses in tomorrow?

THE COURT: I see no point. You claim you want to argue these motions.

MR. GOULD: That won't take all day.

THE COURT: I thought you said two.

MR. FELDSHUH: I think we should get a definitive statement from the Government, your Honor. He says he is going to think about whether he has somebody.

MR. SORKIN: I asked Mr. Feldshuh for the umpteenth time about the passport. You have seen it now. Are we going to get a stipulation? That is another thing holding us up. You have the passport. I showed it to Mr. Gould.

MR. FELDSHUH: I will stipulate that this is Mr.Frank's passport. That is all I will stipulate to.

As to its relevance or competency, I am not stipulating to that.

MR. SORKIN: Fine.

MR. FELDSHUH: Does that end it?

MR. SORKIN: That ends it.

MR. FELDSHUH: Can we get a statement on the record that the Government rests now?

MR. SORKIN: Your Honor, again, I would really ask the Court, we were going to go through until Tuesday anyway --

THE COURT: No, but the jury -- I want to get the decks cleared. This is the craziest way of doing business.

Obviously, I don't like to blame you for all of this, but it does occur to me that we ought to know.

MR. SORKIN: Your Honor, I don't anticipate at this moment calling any further witnesses.

THE COURT: We will accept that for the time being. Let me ask you, Mr. Gould, do you want to put on somebody tomorrow?

MR. GOULD: If we can get him. I don't know.

THE COURT: I will leave that up to you.

MR. GOULD: We have problems.

MR. FELDSHUH: As far as I am concerned, I will be spending the night making the motions.

MR. GOULD: That is what we will have to do is concentrate on that.

THE COURT: I originally understood you, but now you say something about witnesses.

If you want to bring in a witness, leave it

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1hb-20 this way. You let me know tomorrow once we hear from the Government what you want to do. MR. GOULD: What I would suggest we do then, your Honor, is we will be prepared to argue motions in the morning and we will try to get a witness or two that can be rounded up. THE COURT: If you can't, fine. Just let me know what your preference is. MR. GOULD: We will know in the morning. THE COURT: Fair enough. MR. GOULD: I am just surprised by this. THE COURT: So am I. MR. GOULD: I am not angry, but I am surprised about it.

(Adjourned to Tuesday, October 1, 1974, at 10:30 A.M.)

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4	Alan Rashes	1868	1881	1896	
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5	Nathan Hyman	1907	1914		
6	Elinor Wien Goldinher	1927	1938	1951 1952	
7	Joseph A. Kelly	1955			
8	Dominick DeQuarto	1965.	1974	1981	
9	Philip C. Bloom	1982			
10	Thomas Patrick Doonan	1992			
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12		EXHIBIT	INDEX	· •	
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14	67A.			1875	
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